

# DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

## Clause wise Discussion on the Draft Constitution

### SECTION FIVE

#### Clause-wise Discussion

16th May 1949 to 16th June 1949

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### Discussion on the Articles:

#### HINDI NUMERALS ON CAR NUMBER PLATES

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**Pandit Balkrishna Sharma** : ...My submission to him has always been that Delhi as a Province is surrounded on all sides by Provinces which have declared Hindi as their Government language and Deva-nagari as the Government script.

**Mr. President** : Order, order. I have got the information which you wanted to give me. As I said. Honourable Members will not insist upon my giving a ruling on the question of privilege. It may not be in their interest. As I have said, the matter will be taken up with the Government.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : There is no privilege to break the law.

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## ARTICLE 92

**The Honourable Dr. B. R. Ambedkar: Sir, I move:**

1. " That in sub-clause (h) of clause (3) of article 92, for the words ' emoluments ' the words ' salaries' be substituted."

That is the usual wording we are using.

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**The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:**

2. "That in sub-clauses (a) and (h) of clause (2) of article 92, for the words ' revenues of India ' the words ' Consolidated Fund of India ' be substituted."

3. " That in clause (3) of article 92. for the words ' revenues of India ' the words ' Consolidated Fund of India ' be substituted."

4. " That after sub-clause (d) of clause (3) of article 92, the following sub-clause be inserted:—  
' (dd) the salary, allowances and pension payable to or in respect of the Comptroller ' and Auditor-General of India'."

With regard to 9, all I, need say is that the House has already passed article 124, clause (5) which contains the present amendment. It is therefore here, because, it was felt that all items which are declared to be charges on the Consolidated Fund of India had better be brought in together, rather than be scattered in different parts of the Constitution.

***[All four amendments of Dr. Ambedkar as shown above were accepted others were rejected. Article 92 as amended was added to the constitution.]***

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## ARTICLE 93

**The Honourable Dr. B. R. Ambedkar: Sir, I move :**

" That in clause (1) of article 93, for the words ' revenues of India ' the words ' Consolidated Fund of India ' lie substituted."

***[Amendment was carried. Article 93, as amended, was added to the constitution.]***

## ARTICLE 94

**The Honourable Dr. B. R. Ambedkar: Sir, I move:**

" That for article 94, the following article be substituted :—( Appropriation Bills).

' 94. (1) As soon as may be after the grants under the last preceding article have been made by the House of the People there shall be introduced a Bill to provide for the appropriation out of the Consolidated

Fund of India all moneys required to meet—

(a) the grants so made by the House of the People: and

(b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(3) Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated fund of India except under appropriation made by law passed in accordance with the provisions of this article.' "

As I explained yesterday the object of this new article 94 is to replace the provisions contained in the old article relating to the certification of a schedule by the Governor-General.

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**The Honourable Dr. B. R. Ambedkar:** Mr. President, Sir, I thought that the observations made by my Friend Mr. T. T. Krishnamachari would have been regarded as sufficient to meet the objections raised by my Friend Mr. Santhanam, but since my Friend Mr. Bharathi by his speech has indicated that at any rate his doubts have not been cleared, I find it necessary to rise and to make a few observations. My Friend Mr. Santhanam said that we were unnecessarily borrowing the procedure of an Appropriation Bill and that the existing procedure of an authenticated schedule should have been sufficient for our purposes. His argument if I understood him correctly was this : that an Appropriation Bill is necessary in the House of Commons because the supply estimates are dealt with by a Committee of the whole House and not by the House itself. Consequently the Appropriation Bill is, in my opinion, a necessary concomitant of a procedure of estimates being dealt with by sort of Committee of the House. Personally, I think there is no connection between the Committee procedure of the House of Commons and the necessity of an Appropriation Bill. I might tell the House as to how this procedure of the House of Commons going into a Committee of Supply to deal with the estimates came into being. The House will remember that there was a time in English political history when the King and the House of Commons were at loggerheads. There was not such pleasant feeling of trust and confidence which exists now today between the House of Commons and the King. The King was regarded as a tyrant, as an oppressor, as a person interested in levying taxes and spending them in the way in which he wanted. It was also regarded that the Speaker of the House of Commons instead of being a person chosen by

the House of Commons enjoying the confidence of the House of Commons was regarded as a spy of the King. Consequently, the members of the House of Commons always feared that if the whole House discussed the estimates, the Speaker who had a right to preside when the House as a whole met in session would in all probability, to secure the favour of the King, report the names of the members of the House to the King who criticised the King's conduct, his wastefulness, his acts of tyranny. In order therefore to get rid of the Speaker who was, as I said in the beginning, regarded as a spy of the King carrying tales of what happened in the House of Commons to the King, they devised this procedure of going into a Committee; because when the House met in Committee the Speaker has no right to preside. That was the main object why the House of Commons met in Committee of Supply. As I said, even if the House did not meet in Committee of Supply, it would have been necessary for the House to pass an Appropriation Bill. As my Friend—at least the lawyer friends—will remember, there was a time when the House of Commons merely passed resolutions in Committee of Ways and Means to determine the taxes that may be levied, and consequently the taxes were levied for a long time—I think up to 1913 on the basis of mere resolutions passed by the House of Commons Committee of Ways and Means. In 1913 this question was taken to a Court of law whether taxes could be levied merely on the basis of resolutions passed by the House of Commons in the Committee of Ways and Means, and the High Court declared that the House of commons had no right to levy taxes on the basis of mere resolutions. Parliament must pass a law in order to enable Parliament to levy taxes. Consequently, the British Parliament passed what is called a Provincial Collection of taxes Act.

I have no doubt about it that if the expenditure was voted in Committee of Supply and the resolutions of the House of Commons were to be treated as final authority, they would have also been condemned by Courts of law, because it is an established proposition that what operates is law and not resolution. Therefore my first submission is this : that the point made by my Friend Mr. Santhanam, that the Appropriation Bill procedure is somehow an integral part of the Committee procedure of the House of Commons has no foundation whatsoever. I have already submitted why the procedure of an authenticated schedule by the Governor-General is both uncalled for, having regard to the altered provision of the President who has no function in his discretion or in his individual judgement, and how in matters of finance the authority of Parliament should be supreme, and not the authority of the executive as represented by the President. I therefore need say nothing more on this point.

Then my Friend, Mr. Santhanam, said, if I understood him correctly, that article 95—1 do not know whether he referred to article 96; but he certainly referred to

article 95—would nullify clause (3) of the new article 94. Clause (3) stated that no money could be spent except under an appropriation made by law. He seemed to be under the impression that supplementary, additional or excess grants which are mentioned in new article 95, and votes on account, or votes on credit or exceptional grants mentioned in the new article 96 would be, voted without an Appropriation law. I think he has not completely read the article. If he were to read sub-clause (2) of the new article 95 as well as the last para of new article 96 and also a further article which will be moved at a later stage—which is article 248A—he will see that there is a provision made that the moneys can be drawn, whether for supplementary or additional grants or for votes on account or for any purpose, without a provision made by law for drawing moneys on Consolidated Fund. I can quite understand the confusion which probably has arisen in the minds of many Members by reason of the fact that in some place we speak of a Consolidated Fund Act while in another place we speak of an Appropriation Act. The point is this : fundamentally, there is no difference between a Consolidated Fund Act and an Appropriation Act. Both have the same purpose, namely, the purpose of authorising an authority duly constituted to draw moneys from the Consolidated Fund. The difference between a Consolidated Fund Act and the Appropriation Act is just this. In the Consolidated Fund Act a lump sum is mentioned while in the Appropriation Act what is mentioned is all the details— the main head, the sub-heads and the items. Obviously, the procedure of an Appropriation Bill cannot be brought into operation at the stage of a Consolidated Fund Bill because Parliament has not gone through the whole process of appropriating money for heads, for sub-heads and for items included under the sub-heads. Consequently when money is voted under a Consolidated Fund Act, it means that the executive may draw so much lump sum out of the Consolidated Fund which will at a subsequent stage be shown in what is called the final Appropriation Act. If Honourable Friends will remember that there is no authority given to the executive to draw money except under a Consolidated Fund Act or under an Appropriation Act, they will realize that so far as possible an attempt is made to make these provisions as fool-proof and knave-proof as one can possibly do.

*[Dr. Ambedkar's motion was adopted. Article 94, as amended was added to Constitution.]*

## ARTICLE 95

**The Honourable Dr. B. R. Ambedkar:** Sir, I move:

" That for article 95, the following article be substituted : (Supplementary, additional or excess grants).

'95(1) The President shall—

(a) if the amount authorised by any law made in accordance with the provisions of article 94 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause, to be presented to the House of the People a demand for such excess, as the case may be.

(2) the provision of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein; or to a demand for a grant and the law to be made for the authorization of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.' "

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**The Honourable Dr. B. R. Ambedkar** : Mr. President, Sir, I find that the financial provisions which are placed before this House have given considerable worry to the Members. I can appreciate that, for I remember that when Mr. Churchill's father became the Lord Chancellor, a budget was placed before him showing figures in decimals and dots thereon. Evidently he was not a student of mathematics and could not understand what the figures meant with a dot in it. So he wrote on the file, " what do these damned dots mean ?", asking for an explanation from the Secretary of the Finance Department. Having regard to such difficulty of understanding from persons so highly placed as Mr. Churchill's father, I am not at all surprised if the members of this House also find similar difficulty in understanding these provisions. I should therefore like to go somewhat into elementary propositions in order to place the House in a right frame of mind.

Sir, I should like to tell the House the effect of the provisions contained in article 92, article 93(2) and article 94. Article 92 places upon the President the obligation to lay before Parliament a financial statement for the year—1 would like to emphasise the words " for the year "—showing the expenditure in certain categories, those charged on the revenues of India and those not charged on the revenues of India. After that is done, then comes into operation article 93(2), which states how the estimates are to be dealt with. It says that the estimates shall be presented to the House in the form of demands and shall be voted upon

by the House of the People. After that work is done, article 94 comes into operation, the new article 94 which says that all these grants made by the House of the People shall be put and regularised in the form of an Appropriation Act No. I would like to ask the Members to consider what the effect is of articles 92, 93 (2) and 94. Suppose We did not enact any other article, what would be the effect ? The effect of the provisions contained in articles 92,93(2) and 94 in my judgement would be that the President would not be in a position constitutionally to present before Parliament any other estimates during the course of the year. Those are the only estimates which the President could present according to law. That would mean that there would be no provision for, submitting supplementary grants, supplementary demands, excess grants on the other grants which have been referred to such as votes on credit and things of that sort. If no provision was made for the presentation of supplementary grants and the Other grants to which I have referred, the whole business of the executive would be held up. Therefore, while enacting the general provision that the president shall be bound to present the estimates of expenditure for the particular year before Parliament, he is also authorised by law to submit other estimates if the necessity for those estimates arises. Unless therefore we make an express provision in the Constitution for the presentation of supplementary and excess grants, articles 92,93(2) and 94 would debar any such presentation. The House will now understand why it is necessary to make that provision for the presentation of these supplementary demands.

The question has been raised as to excess grants. The difficulty, I think, is natural. Members have said that when it is stated that no moneys can be spent by the executive beyond the limits fixed by the Appropriation Act, how is it that a case in excess grants can arise ? That, I think, is the point. The reply to that is this. We are making provisions in the terms of an amendment moved by my Friend Pandit Kunzru, which is new article 248-B on page 27 of List I, where there is a provision for the establishment of a Contingency Fund out of the Consolidated Fund of India. Personally myself, I do not think that such a provision is necessary because this question had arisen in Australia, in litigation between the state of New South Wales and the Commonwealth of Australia and the question there was whether the Commonwealth was entitled to establish a Contingency Fund when the law stated that all the revenues should be collected together into a Consolidated Fund, and the answer given by the Australia-Commonwealth High Court was that the establishment of a Consolidated Fund would not prevent the legislature of the Parliament from establishing out of the Consolidated Fund any other fund, although that particular fund may not be spent during that year because it is merely an appropriation although in a different form. However to leave no doubt on this point that it would be open to Parliament

notwithstanding the provision of a Consolidated Fund to create a Contingency Fund. I am going to accept the amendment of my Friend, Pandit Kunzru for the incorporation of a new article 248-B. It is, therefore, possible that apart from the Fund that is issued on the basis of an Appropriation Act to the executive, the executive would still be in possession of the Consolidated Fund and such other fund as may be created by law from time to time. It would be perfectly possible for the executive without actually having any intention to break the Appropriation Act to incur expenditure in excess of what is voted by Parliament and draw upon the Contingency Fund or the other fund. Therefore a breach of the Act has been committed and it is possible to commit such an act because the executive in an emergency thinks it ought to be done and there is provision of fund for them to do so. The question, therefore, is this : when an act like this is done, are you not going to make a provision for the regularisation of that act ? In fact, if I may say so, the passing of an excess grant is nothing else but an Indemnity Act passed by Parliament to exonerate certain officers of government who have in good faith done something which is contrary to the law for the time being. There is nothing else in the idea of an excess grant and I would like to read to the Members of the House paragraph 230 from the House of Commons—Manual of Procedure for the public business. This is what paragraph 230 says :—

" An excess grant is needed when a department has by means of advances from the Civil Contingencies Fund or the Treasury Chest Fund or cut of funds derived from extra receipts or otherwise spent the money on any service during any financial year in excess of the amount granted for that service and for that year."

Therefore, there is nothing very strange about it. The only thing is that when there is a supplementary estimate the sanction is obtained without excess expenditure being incurred. In the case of excess grant the excess expenditure has already been incurred and the executive comes before Parliament for sanctioning what has already been spent. Therefore, I think there is no difficulty; not only there is no difficulty but there is a necessity, unless you go to the length of providing that when any executive officer spends any money beyond what is sanctioned by the Appropriation Act, he shall be deemed to be a criminal and prosecuted, you shall have to adopt this procedure of excess grant.

**The Honourable Shri K. Santhanam:** May I ask if under the provisions of the law as stated in the new article 95(2) the three preceding articles will have effect ? Does it mean that every supplementary demand should be followed by a supplementary Appropriation Act.

**The Honourable Dr. B. R. Ambedkar:** Yes; that would be the intention.

**The Honourable Shri K. Santhanam :** The appropriation will not be for the whole year ?

**The Honourable Dr. B. R. Ambedkar :** There may be supplementary



appropriation. That always happens in the House of Commons.

**Prof. Shibban Lal Saksena:** What about my amendment, Sir ?

**The Honourable Dr. B. R. Ambedkar:** I am very sorry. Prof. Shibban Lal Saksena says that the financial year should be changed. Well, I have nothing to say except that I suspect that his motives are not very pure. He perhaps wants a winter session so that he can spin as long as he wants. If he wants longer sessions, he must sit during summer months as we are now doing.

*[Dr. Ambedkar's amendment was accepted. Article 95, as amended, as mentioned earlier was added to the Constitution.]*

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## ARTICLE 96

**The Honourable Dr. B. R. Ambedkar:** Sir, I move:

" That for article 96. the following article lie substituted :— (Votes on account, votes on credit & exceptional grants).

' 96 (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the House of the People shall have power—

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 93 of this Constitution for the voting of such grant and the passing of the law in accordance with the provisions of article 94 of this Constitution in relation to that expenditure;

(b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year;

and to authorise by law the withdrawal of moneys from the consolidated Fund of India for the purpose for which the said grants are made.

(2) The provisions of articles 93 and 94 of this Constitution shall have effect in relation to the making of any grant under clause (1) of this article and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.' "

**The Honourable Shri K. Santhanam :** Sir, I do not want to reopen the general principle which has been accepted; but I wish to say that the drafting of this article is rather defective.

For instance, in clause (1) it says, " the House of the People shall have power " and this is followed by, after sub-clause (c), " and to authorise by law....." I think according to the Constitution, the House of the People cannot authorise by law.

**The Honourable Dr. B. R. Ambedkar :** I should say. Sir, that the Drafting Committee reserves to itself the liberty to re-draft the last three lines following sub-clause (c).

**The Honourable Shri K. Santhanam:** Sir, I am unable to understand this. In the House here we pass something which is obviously wrong and unconstitutional and then leave it to the Drafting Committee. I do not think we can leave it to the Drafting Committee to tamper with the provisions we are making unless there is some lacuna or a mistake. We *do* not want *to* be faced with a new Constitution altogether and subjected to the trouble of looking at it article by article again. I do not think it is right for this House to pass a clause which is obviously wrong. Either he must say Parliament shall have power.....

**The Honourable Dr. B. R. Ambedkar :** I am prepared to accept the amendment right now. You may suggest it. " Parliament shall have power to authorise by law.

**The Honourable Shri K. Santhanam :** Sir, the amendment may be, " and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made. "

Coming to clause (2), it says " that the provisions of articles 93 and 94 of this Constitution shall have effect in relation to the making of any grant...;" I want to know if this means that there will have to be an Appropriation Act for this and that Appropriation Act will also show all the divisions, charged and non-charged, votable and non-votable, as stated in the previous article. If that is the implication.....

**The Honourable Dr. B. R. Ambedkar:** That cannot be.

**The Honourable Shri K. Santhanam:** Article 93 says.....

**Shri T. T. Krishnamachari :** If it will help the Honourable Member, we can say, there will be a Consolidated Fund Bill No. 1 before an Appropriation Act, which will have the main skeleton.

**The Honourable Shri K. Santhanam:** What I want to know is whether the Consolidated Fund Bill No. 1 will also consist of the charged and non-charged amounts and voted and non-voted amounts, or will give only the' votable portion.

**The Honourable Dr. B. R. Ambedkar :** The charged portion occurs only in the final Appropriation Act. This voting account gives what in the technical language

of the House of Commons are called supply services as distinct from services charged on the revenues.

**The Honourable Shri K. Santhanam:** This article says that the provisions of articles 93 and 94 will have to be complied with.

**The Honourable Dr. B. R. Ambedkar :** Articles 93 and 94 mean the voting of Appropriation Act.

**The Honourable Shri K. Santhanam :** Article 93, first part, says that the charged portion would be shown and the second part says that such portion as is votable shall be presented to the vote. I want to know whether both these portions will be applicable to the voting account.

**The Honourable Dr. B. R. Ambedkar:** Article 93 says that the vote of the House is not necessary for services charged on the revenues of India.

**The Honourable Shri K. Santhanam :** But, they will have to be shown in the Appropriation act.

**The Honourable Dr. B. R. Ambedkar :** When passed. This is what is called Consolidated Fund Act 1.

**The Honourable Shri K. Santhanam :** Article 94 does not deal with Consolidated Fund Act.

**The Honourable Dr. B. R. Ambedkar:** That is also the Appropriation Act. As I stated before, there is no distinction. The Appropriation Act shows the details while the Consolidated Fund Act does not show details.

**The Honourable Shri K. Santhanam :** I do not think Dr. Ambedkar's explanations can override the precise provisions of an article. As the article stands, all the provisions of articles 93 and 94 will apply to this Consolidated Fund as to the other. Therefore, the entire budget procedure will have to be duplicated.

**The Honourable Dr. B. R. Ambedkar :** If the honourable Member will read carefully sub-clause (2), he will see what sub-clause it deals with. It says, " The provisions of articles 93 and 94 of this Constitution shall have effect in relation to the making of any grant under clause (1).

**The Honourable Shri K. Santhanam:** Please read on..

**The Honourable Dr. B. R. Ambedkar:** As I stated, there is no question of grant with regard to services charged on the revenues.

**The Honourable Dr. B. R. Ambedkar :** Sir, I do not think there is any necessity to say anything more. I am only moving an amendment :

"That after sub-clause (c), of clause (1), the following words be added after ' and ' and before ' to ' :—

' Parliament shall have power. ' "

**[Amendment was accepted along with Dr. Ambedkar's previous motion. Article 96, as amended, was added to the constitution.]**

## ARTICLE 97

**The Honourable Dr. B. R. Ambedkar :** I do not think any reply is called for, but I would like. Sir, with your permission to move one amendment myself. I move :

"That with reference to amendment No. 1723 of the List of Amendments, in clause (3) of article 97, for the words ' revenues of India ' the words ' Consolidated Fund of India ' be substituted."

**Shri H. V. Kamath :** The words at the end of the clause have been needlessly repeated.

**The Honourable Dr. B. R. Ambedkar:** I do not think so.

**Mr. President:** I shall now put Dr. Ambedkar's amendment.

The question is:

"That with reference to amendment No. 1723 of the List of Amendments, in clause (3) of article 97, for the words ' revenues of India ' the words ' Consolidated Fund of India ' be substituted."

The amendment was adopted.

Article 97, as amended, was added to the Constitution.

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## ARTICLE 98

**The Honourable Dr. B. R. Ambedkar :** All that I can say is that I cannot accept Mr. Jaspat Roy Kapoor's amendment. It is much better that the matter be left elastic to be provided for by rules. With regard to Mr. Kamath's amendment, I certainly feel drawn to it. But for the moment I cannot commit myself, but I can assure him that this matter will be considered by the Drafting Committee.

**Mr. President :** Then I do not put Mr. Kamath's amendment to the vote. I treat it as a drafting amendment which the Drafting Committee will consider.

With regard to Mr. Jaspat Roy Kapoor's amendment No. 15 I would like to draw Dr. Ambedkar's attention to one point. In clause (2) of article 98 we have the words:

" With respect to the Legislature of the Dominion of India."

In another place we have used the expression " Constituent Assembly of India". I suppose Dr. Ambedkar would like to have the same expression here also ?

**The Honourable Dr. B. R. Ambedkar:** Yes.

**Mr. President :** I was pointing out that here in this clause (2), the expression " Legislature of the Dominion of India " occurs. Perhaps, the expression ' Constituent Assembly of India ' will be better ?

**The Honourable Dr. B. R. Ambedkar:** We have now got two Assemblies so to say, the Constituent Assembly sitting as Constituent Assembly and the

Constituent Assembly sitting as legislature. We have rules on both sides. I think therefore it would be desirable to retain the words ' Dominion of India ', so that we could adopt the rules which are prevalent on the other side.

**Shri Jaspat Roy Kapoor:** My submission is that for the words ' Legislature of the Dominion of India ' we may have the words ' Constituent Assembly of India ' and the words ' Legislative ' within brackets. That is how we have describing our Constituent Assembly when it functions as Legislature.

**The Honourable Dr. B. R. Ambedkar:** We have to use the language of the India Independence Act. We have to restrict ourselves to the terminology of the Act.

**Mr. President :** If it will not create any difficulty, I do not mind it. I will put the amendment moved by Shri Jaspat Roy Kapoor to vote.

**Shri Jaspat Roy Kapoor :** Sir, I seek leave of the House to withdraw it. I do not want it to have the fate of a defeated amendment.

' **Mr. President:** If the House grants him leave to withdraw his amendment, it may be withdrawn.

*[The amendment was, by leave of the Assembly, withdrawn. Article 98 was added to the Constitution.]*

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#### NEW ARTICLE 98-A

**Mr. President :** We have notice of an amendment to insert a new article by Dr. Ambedkar. '

**The Honourable Dr. B. R. Ambedkar: I move:**

" That after article 98, the following new article he inserted :—( Regulation by law of procedure in Parliament in relations to financial business).

' 98-A. Parliament may, for the purpose of the timely completion of the financial business, regular by law the procedure of, and the conduct of business in, each House of Parliament in relation to any financial matter or to any Bill for appropriation of moneys out of the Consolidated Fund of India ' and, if and in so far as the provision of any law so made is in consist with any rule made by a House of Parliament under the last preceding article or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.'

" **Mr. President :** As no Member desires to speak on this amendment, I shall put the motion to vote.

The motion was adopted.

Article 98-A was added to the Constitution.

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### ARTICLE 173

**Mr. President** : ...Dr. Ambedkar may move the next amendment, No. 2464.

**The Honourable Dr. B. R. Ambedkar** : Sir, I move :

" That in clause (4) of article 173, after the words ' deemed to have been passed ' the words by ' both Houses in the form in which it was passed ' be inserted."

*[The amendment of Dr. Ambedkar was accepted. ]*

Article 173, as amended, was added to the Constitution.

### ARTICLE 174

**Mr. President** : Dr. Ambedkar, there are two amendments in your name Nos. 69 and 70 of 'List 1. These are only to bring this article into line with the provisions which we have already adopted.

**The Honourable Dr. B. R. Ambedkar** : Sir, I move :

" That for sub-clause (c) and (d) of clause (1) of article 174, the following be substituted:

(c) the custody of the Consolidated Fund or the Contingency fund of the State, the payment of moneys into or the withdrawal of moneys from any such fund:

'(d) the appropriation of moneys out of the Consolidated Fund of the State'."

and also—

" That in sub-clause (e) and (f) of clause (1) of article 174, for the words ' revenue of the State ' the words ' Consolidated Fund of the State ' be substituted. "

**Mr. President** : There are no other amendments to this article. I shall now put it to vote.

**Shri H. V. Kamath** : Does not Dr. Ambedkar want to say anything in the matter ?

**The Honourable Dr. B. R. Ambedkar** : All I can say is that I shall look into the matter when we take up the revision of the Constitution.

*[Dr. ambedkkar amendments were adopted.]*

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**Shri H. V. Kamath** : As Dr. Ambedkar has promised to look into the matter, I will leave it to his wisdom. He might exercise it at a later stage.

**Mr. President** : Both the amendments ?

**The Honourable Dr. B. R. Ambedkar:** There is only one amendment.

**Shri H. V. Kamath :** May I ask which one he promised to look into ? Perhaps he will make it clear.

**The Honourable Dr. B. R. Ambedkar :** Amendment No. 2466.

**Mr. President :** Very well, then, I will not put them to vote.

Article 174, as amended, was added to the Constitution.

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**The Honourable Dr. B. R. Ambedkar :** I want article 175 to be held over.

**Shri T. T. Krishnamachari :** I suggest articles 175 and 176 may be held over as they affect some problems which the Drafting Committee are still considering. Article 177 may be taken.

**Mr. President :** Then we shall take up article 177.

### ARTICLE 177

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

"That in sub-clauses (a) and (h) of clause (2) of article 177, for the words ' revenues of the State ' the words ' Consolidated Fund of the State ' .he substituted."

I move:

" That in clause (3) of article 177, for the words ' revenues of each State ', the words ' Consolidated Fund of each State ' he substituted."

Sir, I also move :

" That in sub-clause (b) of clause (3) of article 177, for the word ' emoluments ' the word ' salaries ' be substituted. "

***[Dr. Ambedkar's all amendments were carried.]***

### ARTICLE 178

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That in clause (1) of article 178. for the words ' revenues of a State ', the words ' Consolidated Fund of a State ' be substituted."

(Amendment No. 2490 was not moved).

**Mr. President :** The question is :

" That in clause (1) of article 178, for the words ' revenues of a State ', the words ' Consolidated Fund of a State ' be substituted."

The amendment was adopted.

**Mr. President :** The question is :

" That article 178, as amended, stand part of the Constitution."

The motion was adopted.  
Article 178, as amended, was added to the Constitution.

## ARTICLE 179

**The Honourable Dr. B. R. Ambedkar :** Sir, I move:

" That for article 179, the following be substituted :—( Appropriation Bills).

'179. (1) As soon as may be after the grants under the last preceding article have been made by the Assembly there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State all money required to meet—

(a) the grants .so made by the Assembly, and

(b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.

(2) No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(3) Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article'."

**Mr. President :** There is no other amendment to this article.

*[The motion was adopted. Article 179, ax amended, wax added to the Constitution. ]*

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## ARTICLE 180

**The Honourable Dr. B. R. Ambedkar :** Sir I move :

" That for article 180, the following article be substituted :—( Supplementary additional or excess grants).

'180 (1) The Governor shall—

(a) if the amount authorised by any law made in accordance with the provisions of article 179 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for



that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.

(2) The provisions of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the consolidated Fund of the State to meet such expenditure or grant. "

Article 180, as amended, was added to the constitution  
Amendment was adopted

## ARTICLE 181

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That for article 181, the following article be substituted : (Votes on account, votes on credit & exceptional grants).

181. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the Legislative Assembly of a state shall have power.

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 178 of this Constitution for the voting of such grant and the passing of the law in accordance with the provisions of article 179 of this constitution in relation to that expenditure;

(b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year :

and the Legislature of the state shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of articles 178 and 179 of this Constitution shall have effect

in relation to the making of any grant under clause (1) of this article and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.' "

*[Motion was adopted. Article 181 as amended, was added to the Constitution.]*

## ARTICLE 182

**Mr. President :** The question is :

" That article 182 form part of the constitution."

**The Honourable Dr. B. R. Ambedkar :** With your permission. Sir. I seek to move a small amendment.

" That in article 182, for the words ' revenues of the State ', the words ' Consolidated fund of the State ' be substituted. "

**Mr. President :** There is no other, amendment.

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*[The amendment was adopted. Article 182, as amended was added to the Constitution.]*

## ARTICLE 183

**Mr. President :** Does anyone else wish to say anything ?

**The Honourable Dr. B. R. Ambedkar :** I do not accept this amendment. (of Mr. Sidhwa)

**Mr. President :** The question is :

" That in clause (1) of article 183, the word ' shall ' be substituted for the word ' may ' and the following be added at the end :—'

within 6 months from the date of the first session of the assembly. '

The amendment of Mr. R. K. Sidhva was negatived.

Article 183 was added to the Constitution.

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## NEW ARTICLE 183-A

**Mr. President:** There is a new article 183-A proposed by Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar :** Sir, I beg to move :

" That after article 183, the following new article he inserted :—( Regulation by law of procedure in the Legislature of the State in relation to financial business).

'183-A. The Legislature of a State may, for the purpose of the timely completion of the financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if in so far as the provision of any law so made is consistent with any rule made by the House or either House of the Legislature of the State under the last preceding article or with any rule or standing order having effect in relation to the Legislature of the state under clause (2) of that article, such provision shall prevail.' "

**Mr. President :** Does anyone wish to say anything ? The question is :

" That new article 183-A be added to the constitution."

The motion was adopted.

Article 183-A, was added to the Constitution.

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## ARTICLE 217

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**Mr. President :** I have not seen any amendment.

**Prof. Shibban Lal Saksena :** I gave notice of it this morning. I beg to move.....

**The Honourable Dr. B. R. Ambedkar** (Bombay: General) : We have not got copies of his amendment.

**Shri L. Krishnaswami Bharathi** (Madras : General): We cannot follow what he is moving.

**Mr. President :** He gave notice of his amendment a few minutes before we actually sat. But I am told it is more or less word for word the same as No. 2741.

**Prof. Shibban Lal Saksena :** Sir, I feel that articles of this fundamental importance should not go unnoticed in this House merely because certain amendments are not moved by Members who gave notice of them. The Honourable Dr. B. R. Ambedkar : I would like to raise one or two points about this. This seems to be a rather important matter. The first tiling I want to know is whether this is an amendment or an amendment to an amendment. If it is an amendment to an amendment, it cannot be moved unless the main amendment is moved.

**Mr. President :** It is an amendment to amendment No. 2743 which has been moved by Mr. Naziruddin Ahmad. The Honourable Member in his notice says that his amendment is an amendment to Nos. 2741,2742, 2743,2744 or 2745.

**The Honourable Dr. B. R. Ambedkar :** If it is to be taken as an amendment to

No. 2743, then obviously, as this goes far beyond the scope of 2743, it cannot be moved unless the Member satisfies you that he is not substantially changing the original amendment. As it is, it is a pure reproduction of the amendment which stands in the names of Messrs. Santhanam, Ananthasayanam Ayyangar and others.

Following amendments moved by Mr. T. T. Krishnamachari were adopted.

" That in clause (2) of article 217, after the word and figure ' Part I ' the words and figures ' or Part III ' be inserted. "

" That in clause (3) of article 217, after the word and figure ' Part I ' the words and figures " or Part III ' be inserted. "

The amendments were adopted  
Article 217, as amended, was added to the Constitution.

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#### ARTICLE 224

**The Honourable Dr. B. R. Ambedkar** : I wish that article 224 and 225 be held over.

**Mr. President** : Article 224 and 225 are held over.

#### ARTICLE 226

**The Honourable Dr. B. R. Ambedkar** : I formally move amendment No. 2775. Then I move an amendment to this.

Sir I move:

" That for amendment No. 2775 of the List of Amendments, the following be substituted:—

" That article 226 be renumbered as clause (1) of article 226, and

(a) at the end of the said clause as so renumbered the words ' while the resolution remains in force ' be added : and

(b) after clause (1) of article 226, as so renumbered, the following clauses be added:—

(2) A resolution passed under clause (1) of this article shall remain in force for such period not exceeding one year as may be specified therein :

Provided that if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1) of this article, such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) of this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the

expiration of the said period'."

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**Mr. President :** Before I put the amendment to the vote, do you wish to say anything. Dr. Ambedkar ?

**The Honourable Dr. B. R. Ambedkar :** Much has already been said. Unless you desire me to speak, I would rather not say anything.

**Mr. President :** That is your choice.

*[Article 226, as amended by Dr. Ambedkar's amendment was adopted and added to the Constitution.]*

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## ARTICLE 229

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**The Honourable dr. B. R. Ambedkar :** Sir, I move :

" That with reference to amendments Nos. 27K1 and 2783 of the List of Amendments, for clause (1) of article 229, the following clause be substituted :—

' ( 1 ) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in article 226 and 227 of this Constitution should be regulated in such States by Parliament by law, and resolutions to that effect are passed by the House or, where there are two Houses, by both the Houses of the Legislature of each of the States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.' "

I would like to explain this amendment in a few brief sentences. The original article as it stood said: " If it appears to the Legislature or Legislatures of one or more States to be desirable, etc." The new amendment said " if it appears to the Legislatures of two or more States to be desirable etc." Under the new amendment it would be open to invoke the aid of Parliament to make a law only if two or more States join, and sent a resolution. The other changes in sub-clause (1) of article 229 are merely consequential to this principal amendment, namely, that the power can be invoked only if two or more States desire, but not by a single State.

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**The Honourable Dr. B. R. Ambedkar :** Sir, I quite appreciate the point raised

by my Honourable Friend Mr. Santhanam; but I think he has not carefully read sub-clause (2). The important words are : ' in like manner ', so that if the State legislatures in whose interest this legislation is passed in like manner, that is to say by resolution, agree that such legislation be amended or repealed, Parliament would be bound to do so.

**The Honourable Shri K. Santhanam :** " May be amended " .

**The Honourable Dr. B. R. Ambedkar :** ' May ' means shall. There is no difficulty at all.

*[Dr. Ambedkar's amendment was adopted. Article 229as amended, was added to the Constitution. ]*

### ARTICLE 230

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That in article. 230, for the words ' for any State or part thereof ', the words ' for the whole or any part of the territory of India ' he substituted."

*[The amendment was adopted without further discussion. Article 230, as amended, was added to the Constitution.]*

### ARTICLE 231

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That with reference to amendment No. 2788 of the List of amendments, in clause (2) of article 231. after the word and figure ' Part I ' the words and figures ' or Part III ' be inserted."

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**The Honourable Dr. B. R. Ambedkar :** Sir, I agree that Mr. Thanu Pillars point requires explanation. Now the explanation is this. I am sure he will agree that the rule regarding repugnancy which is mentioned in article 231 must be observed so far as future laws made by Parliament are concerned. He will see that the wording in article 231 is ' whether passed before or after '. Surely with regard to laws made by Parliament alter the commencement of this Constitution, the rule of repugnancy must have universal application with regard to laws made both by the States in Part I and by the States mentioned in Part III. With regard to the question of repugnancy as to the laws made before the passing of this Constitution, the position is this. As I have said so often in this House, it is our desire and I am sure the desire of the House that all articles in the Constitution should be made generally applicable to all States without making any specific differentiation between States in Part I and Part III. It is no good that whenever you pass an article you should have added to that article a proviso making some

kind of saving in favour of States in Part III, although there is no doubt about it that some savings will have to be made with regard to laws made by States in Part III. That is proposed to be done, as I said, in a new Part or a new Schedule where the reservation in respect of States in Part III will be enacted, so that so far as laws made before the Constitution comes into existence are concerned, they would be saved by some provision enacted in that special form or special Schedule. I should like to add to that one more point viz., that while it is proposed to make reservations in that special part in favour of Part III States, nonetheless that reservation could not be absolute because the reservations made therein, at any rate some provisions in that special part, will be governed by article 307 which gives the President the power to make adaptations. Now that adaptation will apply both to States in Part I as well as to States in Part III. Therefore so far as regards laws made by Parliament or the Legislatures of States in Part III before the commencement, they will in the first instance be saved from the operation of article 231 but they will also be subject to the provisions of article 307 dealing with adaptation.

***[Dr. Ambedkar's amendment, as mentioned earlier was accepted. Article 231, as amended, was added to the Constitution.]***

## **ARTICLE 232**

**Mr. President :** We take up article 232.

**The Honourable Dr. B. R. Ambedkar :** Sir, I beg to move :

" That the heading to article 232 ' Restriction on Legislative Powers ' be omitted."

With your permission I move my new amendment :

" (i) That after the word and figure ' Part I ' the words and figures ' or Part III ' be inserted; and

(ii) after clause .(a) of article 232. the following clause be inserted :—'

(aa) where the recommendation required was that of the Ruler, either by the Ruler or by the President'."

Now Sir, I have come to understand that there is some sentimental objection to the use of the word ' ruler '. I am prepared to yield to that sentiment and what I therefore propose is that the House should accept this amendment for the moment and leave the matter to the Drafting Committee to find a better word to replace the word ' ruler '. Otherwise the whole of the article would have to be unnecessarily held over for no other reason except that we cannot find at the moment a better word to substitute for the word ' ruler '.

***[An the above amendments of Dr. Ambedkar were adopted. Article 232, as amended, was added to the Constitution.]***

## ARTICLE 234

**Mr. President :** We take up No. 234.

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

That the following new clause be added to article 234 :—

(3) Where by virtue of any direction given to a State as to the construction or maintenance of any means of communication under the last preceding clause of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.

*[The amendment was adopted. Article 234, as amended was added to the Constitution.]*

## ARTICLE 238

**The Honourable Dr. B. R. Ambedkar:** Sir, I formally move No. 2807:

" That in the proviso to article 238, for the words ' under the terms of any agreement entered into in that behalf by such State with the Union' the words ' under the terms of any instrument or agreement entered into in that behalf by such State with the Government of the Dominion of India or the Government of India or of any law made by Parliament under article 2 of this Constitution ' be substituted."

I move further:

"(1) That with reference to amendment No. 2807 of the List of Amendments, in clause (2) of article 238, after the words ' by law ' the words ' made by Parliament ' be added.

(2) That with reference to amendment No. 2807 of the List of Amendments, the proviso to article 238 be deleted."

The amendment was adopted.

Article 238, as amended, was added to the Constitution.

## ARTICLE 239

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That in article 239, before the word ' State ' where it occurs for the second time in line 29, the word ' other ' be inserted. "

The amendment was adopted.

Article 239, as amended, was added to the Constitution.

## ARTICLE 240



**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That for clause (1) of article 240, the following new clauses be substituted :—

'(1) If the President receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not sufficient importance to warrant such action, appoint a Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or that of those matters as he may refer to them.

(1a) The Commission shall consist of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as the President may deem necessary for the purposes of such investigation'."

***[The amendment was adopted. Article 240 as amended, was added to the Constitution.]***

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### **ARTICLE 112-B**

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That for amendment No.23, the following amendment be substituted :—

" That after the new article 112-A, the following article be inserted :---( Conference on the Supreme Court of Appellate jurisdiction with regard to criminal matters).

112-B Parliament may by law confer on the Supreme Court power to entertain and hear appeals from any Judgement final order or sentence of a High Court in the territory of India in the exercise of its criminal Jurisdiction subject to such conditions and limitations as may be specified in such law.

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### **ARTICLE 111-A**

**Mr. President :** Dr. Ambedkar will now move his amendment.

**The Honourable Dr. B. R. Ambedkar (Bombay : General) :** Sir, I move:

" That with reference to amendments Nos. 23 and 24 of List I (Fifth Week) for the new article I 11-A, the following be substituted :—( Appellate jurisdiction of Supreme Court with regard to criminal matters).

111-A (1) The Supreme Court shall have power to entertain and hear appeals from any judgement, final order or sentence in a criminal proceeding of a High Court in the territory of India—

(a) if the High Court has on appeal reversed the order of acquittal of an accused person and sentenced him to death; or

(b) if the High Court has withdrawn for trial before itself any case from any court subordinate to

its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) if the High Court certifies that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law."

I do not wish to say anything at this stage but I shall reserve my remarks towards the end after hearing the course of debate on my new amendment.

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**The Honourable Dr. B. R. Ambedkar** : Mr. President, Sir, I rise to make just a few observations in order to give the House the correct idea of what is proposed to be done by the introduction of this new article 111-A. The first thing which I should make clear is that it is not the intention of article 111-A to confer general criminal appellate jurisdiction upon the Supreme Court. The jurisdiction sought to be conferred is of a very limited character.

In showing the necessity why it is desirable in my judgement to confer appellate criminal jurisdiction upon the Supreme Court as specified in the sub-clauses of article 111-A, I propose to separate sub-clauses (a) and (b) from sub-clause (c) because they stand on a different footing. As the House knows, (a) and (b) confine the appellate jurisdiction of the Supreme Court only to those cases where there has been a sentence of death : in no other case the Supreme Court is to have criminal appellate jurisdiction. That is the first point that has to be borne in mind.

I shall state briefly why it is necessary to confer upon the Supreme Court this limited appellate jurisdiction in cases where there has been a sentence of death passed upon an accused person. The House should note that so far as our criminal jurisprudence, as it is enshrined in the Criminal Procedure Code, is concerned, there is one general principle which has been accepted without question and that principle is this that where a man has been condemned to death he should have at least one right of appeal, if not more.

**Mr. President** : May I just point out one thing? Your amendment does not cover the case of a person whose sentence has been enhanced to a sentence of death.

**The Honourable Dr. K. R. Ambedkar** : We do not propose to give such a thing. That is the point. With regard to enhancement of the sentence we do not propose to confer criminal jurisdiction of an appellate nature on the Supreme Court. We do it with open eyes and I think everybody ought to know it. That is not the intention. It must be generally accepted that where a man has been

condemned to death lie should have at least one right of appeal. Starting with that premise and examining the provisions of the Criminal Procedure Code it will be found that there are three cases where this principle is, so to say, violated or not carried into effect. The first case is the case where, for instance, the District Judge acting as a Sessions Judge acquits an accused person; the Government which has been invested with a right of appeal against the acquittal appeals to the High Court, and the High Court in its appellate jurisdiction condemns the man to death. In a case like this no appeal is provided. That is one exception to the premise.

The second case is the case of the Sessions Judge in the High Courts of Bombay, Calcutta and Madras, where sitting in a Sessions Court he acquits a criminal; then the government takes an appeal to the High Court on its appellate side and the appellate side on hearing the appeal condemns the man to death. There again there is no appeal. Then there is the third case, which is worse, namely, that under section 526 of the Criminal Procedure Code a High Court, in exercising of the powers conferred upon it by that section, withdraws a case to itself and passes a sentence of death. There again there is no appeal.

**Mr. Naziruddin Ahmad** : There is a right of appeal in such cases.

**The Honourable Dr. B. R. Ambedkar** : No. No appeal from the High Court.

**Mr. Naziruddin Ahmad**: Under section 411-A of the Criminal Procedure Code.

**The Honourable Dr. B. R. Ambedkar** : Section 411-A applies only to the High Courts of Calcutta, Bombay and Madras. Even there it does not apply to all cases or to cases where such High Courts have acted under section 506. Section 411-A is confined to appeals from the judgement of High Courts sitting on the original side, in sessions. Therefore, Sir .....

**Pandit Lakshmi Kanta Maitra**: Section 526 generally refers to transfer of cases.

**The Honourable Dr. B. R. Ambedkar** : When a case is transferred and tried by the High Court, there is no right of appeal. It has extraordinary jurisdiction. Therefore these are three flagrant cases where the general principles that a man who has been condemned to death ought to have at least one appeal is not observed. I think, having regard to the enlightened conscience of the modern world and of the Indian people, such a provision ought to be made. The object of sub-clauses (a) and (b) therefore is to provide a right of appeal to a person who has been acquitted in the first instance and has been condemned to death finally by the High Court. I do not think that on grounds of conscience or of humanity there would be anybody who would raise objection to the provisions contained in sub clauses (a) and (b).

Now I come to sub-clause (c). With regard to this the House will remember that it has today an operative force under the Criminal Procedure Code, section 411,

so far as the High Courts of Calcutta, Madras and Bombay are concerned. This right of appeal to the Privy Council on a certificate from the High Court that it is a fit case was conferred by the Legislative Assembly in the year 1943, and very deliberately. We have therefore before us two questions with regard to the provision contained in section 411 of the criminal Procedure Code. There are two courses open to this House : either to take away this provision altogether or to extend this provision to all the High Courts. It seems to me that if you take away the provisions contained in section 411 which permit an appeal on a certificate from the High Court, you will be deliberately taking away an existing right which has been exercised and enjoyed by people, at any rate, in three different provinces. That seems to me an unnatural proceeding—to take away a judicial right which has already become, so to say, a vested -right. The only alternative course therefore is to enlarge the provisions in such a manner that it will apply to all the High Courts. And the course that has been adopted in my amendment is the second course, namely, to extend it to all the High Courts. My Friends who are agitated that this might open the flood-gates of criminal appeals to the Supreme Courts have, I think, forgotten two important considerations. One important consideration is that the power of hearing appeals which is proposed to be conferred on the Supreme Court under sub-clauses (a) and (b) of clause (1) of the new article may vanish any moment that the legislature abolishes the death penalty. There will be no such necessity left for appeals to the Supreme Court if the legislature, thinking of what is being said in other parts of the world with regard to death penalty, and taking into consideration the traditions of this country, abolishes the death penalty; in that case sub-clauses (a) and (b) would ultimately fall into desuetude and the work of the Supreme Court so far as criminal side is concerned will diminish if not vanish.

With regard to sub-clause (c) it will be noticed that it has been confined in very rigid limits by the proviso which goes along with it, namely " Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require." Therefore, the certificate is not going to be an open process available merely for the asking. It will be subject at both ends to the conditions and limitations laid down by the High Court and the rules made by the Supreme Court. Therefore it will be realised that sub-clause (c) is a very rigid provision. It is not flexible and not as wide as people may think.

**Pandit Lakshmi Kanta Maitra** : Modified by the proviso.

**The Honourable Dr. B.R. Ambedkar** : Yes, us modified by the proviso.

Now, I come to clause (2) of my amendment. There you have got the general power given to Parliament to enlarge the criminal jurisdiction of the Supreme Court beyond the three cases laid down in my amendment. There was a point of

view that the three cases mentioned in clause (1) of my amendment ought to be enough and that there ought not to be a door kept open for Parliament for enlarging the criminal jurisdiction of the Supreme Court and that sub-clauses (a), (h) and (c) ought to be the final limit of criminal jurisdiction of the High Court. Well, the only answer I could give is this : It is difficult to imagine what circumstances may arise in future. I think it would be better to believe it if a man said that there would be no circumstances arising at all requiring Parliament to confer some kind of criminal appellate jurisdiction upon the Supreme Court. Supposing such a contingency did arise and if the provisions of clause (2) of my new article were not there, what would be the position ? The position would be that the Constitution would have to be amended by the procedure we are proposing to lay down in a subsequent part of this Constitution. The question therefore is this : should we make it as hard as that, that the Parliament should also not have the power unless the Constitution is amended, or should we leave the position flexible by enabling Parliament to enact such law, leave the time, the circumstances and the choice to the Parliament of the day ?

**The Honourable Shri K. Santhanam** (Madras : General) May I point out that under article 114 Parliament will still have the power to invest the Supreme Court with jurisdiction.

**The Honourable Dr. B. R. Ambedkar** : I am afraid 114 does not deal with that matter. I have not got the copy with me; otherwise I would have replied. It is only with regard to the Union List.

**The Honourable Shri K. Santhanam** : It deals with the jurisdiction of the Supreme Court in relation to matters contained in the Union List.

**The Honourable Dr. B. R. Ambedkar** : Yes, but supposing they want to enlarge the jurisdiction with regard, for instance, to the Concurrent List, List III, they cannot use article 114.

Now, Sir, I come to some of the observations which were made by my friend, Mr. Alladi Krishnaswami Ayyar. His observations related mostly to sub-clause (3). His first question was, what is the use of having subclause (3) if the provisions of sub-clause (3) are hedged round by the provisions contained in the proviso which goes with it, viz., rules to be made by the Supreme Court.

**Pandit Lakshmi Kanta Maitra** : It is sub-clause (c) and not sub clause (3).

**The Honourable Dr. B. R. Ambedkar** : I am sorry, it is sub-clause (c). His point is that there is no use of having sub-clause (c) hedged as it is by the provisions laid down in the proviso. The first thing I would like to remind my friend, Mr. Alladi Krishnaswami Ayyar is this, that the proviso which is attached to sub-clause (c) is word for word the proviso attached to Section 411 of the Criminal Procedure Code and word for word the proviso contained in article 109 of the Civil Procedure Code. My friend, Mr. Alladi Krishnaswami Ayyar, will

remember that we have introduced in the appellate civil jurisdiction of the Supreme Court a clause which is absolutely word for word the same as sub-clause (c) of clause (1) of article 111-A. Now, I should have thought that if there was some residue of good in sub-clause (c) of clause (1) of article 111, hedged as it is with all the limitations as to the rules to be made by the Supreme Court, as a man of commonsense, I should think, that there must be some residue of good left in sub clause (c) here, notwithstanding the limitations contained in the proviso. My Friend also stated that there is a provision contained in article 112 which confers upon the Supreme Court the right to admit an appeal by special leave, which article is not limited to civil appeal but is a general article which speaks of any cause or in alter. His point was that if that is there, why have sub-clause (c) ? My answer to him is again the same. If 112 defines the jurisdiction which the Supreme Court has over the High Courts, if that is there in civil matters, why have sub clause (c) in clause (1) of Article 111 -A ? My answer to him is this : If we can have sub-clause (c) in civil matters, notwithstanding the fact that we have 112, what objection can there be to have sub-clause (c) though we have 112 ? The point to be home *in* mind is this that with regard to 112 we have left the Supreme Court with perfect freedom to lay down the conditions on which they will admit appeals. The law does not circumscribe their jurisdiction in the matter.

**Shri Alladi Krishnaswami Ayyar** : There is a condition in the case of civil appeals.

**The Honourable Dr. B. R. Ambedkar** : It is true. Now, I do not know how this article 112 will be interpreted by the Supreme Court. We have left it to them to interpret it. They may interpret it in the way in which the Privy Council has interpreted it or they may interpret it in any manner they choose ; either they may put a limited interpretation or they may put a wider interpretation. In case they put a limited interpretation, then I have no doubt about it that sub-clause (c) will have some value. I therefore submit. Sir, that my amendment is such that it meets the exigencies of the cases, satisfies the conscience of some people who object to people being hanged without having any right of appeal. I think it is so worded that the Supreme Court will not administratively or otherwise be overburdened with criminal appeals. I hope my Friends will now withdraw their amendments and accept mine.

**Shri C. Subramaniam** (Madras : General) : On a point of clarification, as to the implication of the difference of language.....

**The Honourable Dr. B. R. Ambedkar** : It is too late now.

**Mr. President** : The Honourable Doctor has not shown in his reply why he makes a distinction between cases in which death sentence has been passed for the first time by the High Court in revision by way of enhancement of sentence and cases in which death sentence is passed in reversal of a judgement of

acquittal.

**The Honourable Dr. B. R. Ambedkar** : The case of an appeal against enhancement of sentence differs from a case of an appeal against acquittal in two respects. When the High Court enhances the sentence against an accused person it is not convicting him for the first time. The accused already stands convicted. In the case of an appeal against acquittal the High Court is reversing the finding of the trial court and convicting the accused. The second point of difference is that in the case of enhancement the proceedings are converted into regular appeal so that in an enhancement proceedings the accused gets a statutory right of appeal under the Criminal Procedure Code to show that not only enhancement of sentence is not warranted but even his conviction is not justified by the facts of the case. In enhancement cases there is already one appeal. That being so, no further appeal is necessary. Thirdly, the amendment recognizes conviction or acquittal as the basis for a right of appeal to the Supreme Court. It does not recognize the nature of sentence or the type of punishment as the basis for a right of appeal.

**Mr. President** : Supposing in a case the trial court holds that it is a case of grievous hurt, although it has resulted in death and passes a sentence of imprisonment and supposing there is an appeal to the High Court which by way of revision holds that it is a case of murder and not grievous hurt and gives a sentence of death. For the first time, the conviction is for murder by the High Court and the sentence of death is also passed for the first time.

**The Honourable Dr. B. R. Ambedkar** : For the moment I am not prepared to go beyond the proposition as set out in my amendment. If Parliament later on thinks that such a case ought to be provided, it has perfect liberty under clause (2).

**Mr. President** : It is a different matter and is for the House to decide. For myself, I have not been able to find the distinction.

**Shri H. V. Pataskar** (Bombay : General) : I have moved amendment No. 25 to the original amendment No. 24 of the Honourable Dr. Ambedkar.

**Mr. President** : There is no time for that. I think you are too late now. We cannot allow it at this stage.

I have to put the various amendments now and those Honourable Members who think that their amendments are covered by the new amendment of **Dr. Ambedkar**, I hope, would withdraw them.

*[The amendment of Dr. Ambedkar was adopted. Other amendments were mostly withdrawn. One was rejected. Article 111 'A as amended, was added to the Constitution.]*

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## ARTICLE 164

**The Honourable Dr. B. R. Ambedkar : Sir, I move :**

" That in clause (1) of article 164 for the words ' Save as provided ' the words ' Save as otherwise provided ' he substituted."

*[Without discussion Amendment was accepted. Article 164, as amended was added to the Constitution.]*

## ARTICLE 167-A

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**The Honourable Dr. B. R. Ambedkar :** Sir, various points have been raised in the course of this debate and I should like to deal with them one by one. If I heard my Friend Mr. Sidhva correctly he referred to article 165 dealing with the question of the taking of the oath or making the affirmation. The point about article 165 is this that if the provisions of article 165 are not complied with it does not cause a vacancy—the seat does not become vacant. All that 165 says is that no person can take part in the voting or in the proceedings of the House unless he has taken the oath. That is all. Therefore I do not see any difficulty about it at all.

**Shri R. K. Sidhva :** Why should it go to the Election Commission ?

**The Honourable Dr. B. R. Ambedkar :** I am coming to that. So far as 165 is concerned I think he will understand the fundamental distinction between that article and article 167. In the case of 165, there is no vacancy caused: there is only disability of taking part in the proceedings of the House.

Now, I come to the main amendment moved by my Honourable Friend Mr. T. T. Krishnamachari and that is article 167-A. Except for one point to which I shall refer immediately I think the amendment is well founded. The reason why the decision is left with the Governor is because the general rule is that the determination of disqualification involving a vacancy of a seat is left with that particular authority which has got the power to call upon the constituency to elect a representative to fill that seat. Although it is not so expressly stated, it is well understood that the question whether a seat is vacant or not by reason of any disqualification such as those mentioned in article 167 must lie with that authority which has got the power to call upon the constituency to elect a representative to fill that seat. There is no doubt about it that in the new Constitution it is the Governor who has been given the power to call upon a constituency to choose a representative. That being so, the power to declare a seat vacant by reason of disqualification must as a consequence rest with the Governor. For this reason so far as clause (1) of article 167-A is concerned, I find no difficulty in accepting it.

Now, I come to clause (2). This is rather widely worded. It says that any



question regarding disqualification shall be decided by the Governor provided he obtains the opinion of the Election Commission and that he is bound to act in accordance with such opinion. If members will turn to article 167, they will find that, so far as the disqualifications mentioned in (a) to (d) are concerned, the Commission is really not in a position to advise the Governor at all, because they are matters outside the purview of the Election Commission. For instance, whether any particular person holds an office of profit or whether a person is of unsound mind and has been declared by a competent court to be so, or whether he is an undischarged insolvent or whether he is under any acknowledgment or adherence to a foreign power are matters which are entirely outside the purview of the Election Commission. They therefore could not be the proper body to advise the Governor. But when you come to sub-clause (e) I think it is a matter which is within the purview of the Election Commission, because under (e) disqualifications might arise by reason of any corruption or any un-professional practice that a candidate may have engaged himself in and which may have been made a matter of disqualification by the Electoral Law.

**Shri L. Krishnaswami Rharathi** : Cannot the Election Commission make the necessary enquiries ?

**The Honourable Dr. B. R. Ambedkar**: There is no question of making any enquiry here. To ascertain whether a man is an undischarged insolvent no enquiry is necessary. Therefore my submission is that while clause (2) of article 167-A is right, it ought to be confined to circumstances falling within sub-clause (e) of article 167.1 would therefore with your permission propose to amend clause (2) thus : " Before giving any decision on any question relating to disqualifications arising under sub clause (e) of clause (1) of the last preceding article, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion." ,

**Mr. President** : As I read the amendment proposed by Shri T. T. Krishnamachari, it seems to me that it does not contemplate a case which has happened before the election or during the election. It contemplates cases arising after the election where a man after becoming a member of the legislature incurs certain disqualifications. These will be dealt with by the Election Commission.

**The Honourable Dr. B. R. Ambedkar** : What happens is that, after filing a petition, the Commission may find a candidate guilty of certain offences during the course of the election, after the election has taken place and the member has taken his seat.

**Mr. President** : Is not the Election Commission entitled to deal with such cases?

**The Honourable Dr. B. R. Ambedkar** : Yes, but what happens is that a man as soon as he is elected is entitled to take his seat on taking the oath or making the

affirmation. He does so and subsequently his rival files an election petition and he is dislodged on the finding of the Court that he has committed offences under the Election Act. That would also come under (e). After a man has taken his seal.....

**Mr. President :** It seems to me that there are two kinds of disqualifications. A member may have incurred certain disqualifications before he became a member or during the course of the election. The election tribunal will be entitled to deal with such cases.

**The Honourable Dr. B. R. Ambedkar :** That would depend upon what sort of procedure we lay down at a later stage.

**Mr. President :** But a man may become subject to a disqualification after taking his seat in the House.

**The Honourable Dr. B. R. Ambedkar :** That is what (e) provides for.

**Mr. President :** Then other disqualification may also come in. He might become unsound in mind and might be declared as such or he might become an undischarged insolvent.

**The Honourable Dr. B. R. Ambedkar :** Those are dealt with here. They are all about sitting members.

**Shri L. Krishnaswami Bharathi :** Please read the amendment.

**The Honourable Dr. B. R. Ambedkar :** There are two sorts of disqualifications : disqualifications which are attached to the candidature as such, namely, that such and such persons who are disqualified shall not stand for election. Then, after they are chosen, certain persons shall not sit in the House if they incur the disqualifications in 167. Let us not confuse the two things.

**The Honourable Shri K. Santhanam :** Both are covered by 167-A.

**The Honourable Dr. B. R. Ambedkar :** That may be so. Let me explain. It all depends on what kind of procedure we adopt. If we adopt the procedure that whether a candidate is qualified for election or not shall be treated as a preliminary issue, that will not be a disqualification under article 167. If on the other hand we have the procedure, which we now have, that every question relating to election, including the question whether a candidate is a qualified candidate or not, can be taken up, then article 167 will apply. My intention as well as the intention of the Drafting Committee is to make a provision permitting the Election Commission to dispose of certain preliminary questions so that the election issue may be fought only on the question whether the election was properly conducted or not. Today we have the things lumped together.

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**Mr. President :** Then Mr. T. T. Krishnamachari's amendment.

"That for amendment No. 2441 of the List of Amendments, the following be substituted:—

" That after article 167, the following new article be inserted :— (Decision on questions as to disqualification of members).

'167-A. (1) If any question arises to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of the last preceding article, the question shall be referred for the decision of the Governor and his decision shall final.

(2) Before giving any decision on any such question, the Governor shall obtain that opinion of the Election Commission and shall act according to such opinion. "

The amendment was adopted.

New Article 167-A was added to the Constitution.

*[Article 167-A, as amended by Dr. Ambedkar's amendment was added to the Constitution.]*

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### ARTICLE 203

**Mr. President** : We take up 203.

**The Honourable Dr. B. R. Ambedkar** : It is to be held over.

**Shri T. T. Krishnamachari** : 203 (2) (b)—there is the question of whether the particular sub-clause should be retained or modified. We require some time and we might be ready with it tomorrow.

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### NEW ARTICLE 209-A

**Mr. President** : There are certain new articles proposed. No. 209-A.

**The Honourable Dr. B. R. Ambedkar** : 209-A is to be held over.

**Mr. President** : Mr. Shibban Lal Saksena has given notice of one.

**Prof. Shibban Lal Saksena** : That also may be held over.

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### ARTICLE 203

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Mr. President, Sir, I move :

" That in article 203, for the marginal heading, the following be substituted :—

' Power of superintendence over all courts by the High Court '."

I also move:

" That in clause (2) of article 203, before the words ' The High Court may ', the words ' Without

prejudice to the generality of the foregoing provisions ',be inserted."

I further move:

" That with reference to amendment No. 2664 of the List of Amendments—

- (i) in clause (1) of article 203, after the words ' all courts' the words ' and tribunals ' be inserted;
- (ii) in clause (2) of article 203, sub-clause (b) he omitted."

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Amendments were adopted.

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*[Article 203, as amended by the above amendments was added to the Constitution.]*

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## ARTICLE 270

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**The Honourable Dr. B. R. Ambedkar : Sir, I move :**

" That with reference to amendments Nos. 2975 and 2976 of the List of amendments, in article 270, for the words ' assets and liabilities' the words ' assets, liabilities and obligations ' be substituted."

Now, as regards the amendment moved by Mr. Naziruddin Ahmad, may I say that he has evidently forgotten that we are using the words " Government of India " to indicate the Government that will come into existence under the new Constitution, while the " Government of the Dominion of India " is a term which is being used to indicate the Government at the present moment. Consequently, if his amendment is accepted , it would mean that the Government of India is succeeding to the liabilities, obligations and assets of the Government of india. It would make absurd reading. Therefore the words as they are there, are very appropriate and ought to be retained.

**The Honourable Shri K. Santhanam** (Madras: General): I am afraid we are passing this article in a hurry. As it has been our attempt to bring the Indian States into line with the provinces, we are here simply providing that the old provinces will be continued while no such provision is made for the States.

**The Honourable Dr. B. R. Ambedkar :** What is your amendment ?

**The Honourable Shri K. Santhanam :** I am not moving any amendment....

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**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I did not think that this article would raise so much debate as it has in fact done, and I therefore feel

it necessary to say a few words in order to remove any misapprehension or doubts and difficulties to which reference has been made.

The first question that is asked is, why is it necessary to have article 270 at all in the Constitution ? The reply to that is a very simple one. Honourable Members will remember that before the Act of 1935 the assets and liabilities and the properties belonging to the Government of India were vested in a Corporation called the Secretary of State-in-Council. It was the Secretary of State-in-Council which held all the revenues of India, the properties of India and was liable to all the obligations that were contracted on behalf of the Government of India. The Government of India before 1935 was a unitary Government. There was no such thing as properties belonging to the Government of India and properties belonging to the Provinces. They were all held by that single Corporation which was called the Secretary of State-in-Council which was liable to be sued and had the right to sue. The Government of India Act, 1935 made a very significant change, viz., it divided the assets and liabilities held by the Secretary of State-in-Council on behalf of the Government of India into two parts—assets and liabilities, which were apportioned and set apart for the Government of India and the assets and liabilities and properties which were set apart for the Provinces. It is true that as the Secretary of State had not completely relinquished his control over the Government of India, the properties so divided between the Government of India on the one hand and the different Provinces on the other were said in the Government of India Act, Section 172 which is the relevant section, that they shall be held by His Majesty for the Government of India and they shall also be held by His Majesty for the different Provinces. But apart from that the fact is this, that the liabilities, assets and properties were divided and assigned to the different units and to the Government of India at the Centre. Now let us understand what we are doing by the passing of this Constitution. What we are doing by the passing of this Constitution is to abrogate and repeal the Government of India Act, 1935. As you will see in the Schedule of Acts repealed, the Government of India Act, 1935 is mentioned. Obviously when you are repealing the Government of India Act which makes a provision with regard to assets and liabilities and properties, you must say somewhere in this Constitution that notwithstanding the repeal of the Government of India Act, such assets as belong to the different Provinces do belong notwithstanding the repeal of the Government of India Act to those Provinces. Otherwise what would happen is this, that there would be no provision at all with regard to the assets and liabilities once the Government of India Act 1935 is repealed. In fact we are doing no more than what we commonly do when we repeal an Act that notwithstanding the repeal of certain Acts, the acts done will remain therein. It is the same sort of thing. What this article 270 practically says is that notwithstanding the repeal of

the Government of India Act, 1935, the assets and liabilities of the different units and the Central Government will continue as before. In other words they will be the successor of the former Government of India and the former Provinces as existed and constituted by the Act of 1935. I hope the House will now understand why it is necessary to have this clause.

Now I come to the other question which has been raised that this article 270 does not make any reference to the liabilities and assets and properties of the Indian States. Now, there are two matters to be distinguished. First, we must distinguish the case of Indian States which are going to be incorporated into the Constitution as integral entities without any kind of modification with regard to their territory or any other matter. For instance, take Mysore, which is an independent State today and will come into the Constitution as an integral State without perhaps any kind of modifications. The other case relates to States which have been merged together with neighbouring Indian Provinces; and the third case relates to those States that are united together to form a larger union but have not been merged in any of the Indian Provinces. Now in regard to a State like Mysore there is no doubt that the Constitution of Mysore will contain a similar provision with regard to article 270 that the assets and liabilities and properties of the existing Government of Mysore shall continue to be the properties, assets and liabilities of the new Government. Therefore it is not necessary to make any provision for a case of the kind in article 270. Similarly about States which have been united together and integrated, their Covenant will undoubtedly provide for a case which is contemplated in article 270. Their Covenant may well state that the assets and liabilities of the various States which have joined together to form a new State will continue to be the assets and liabilities of the new integrated State which has come into being by the joining together of the various States.

Then we come to the last case of States which have been merged with the Provinces. With regard to that I see no difficulty whatever about article 270. Take a concrete case. If a State has been merged in an Indian Province obviously there must have been some agreement between that State which has been merged in the neighbouring Province and that neighbouring Province as to how the assets and liabilities of that merged State are to be carried over,— whether they are to vanish, whether the merged State is to take its own obligations, or whether the obligations are to be taken by the Indian Province in which the State is merged. In any case what the article says is that from the commencement of this Constitution—these words are important and I will for the moment take it that it will commence on 26th January—any agreement arrived at before that date between the Indian Province and the State that has merged into it will be the liability of the Province at the commencement of the Constitution, If for instance, no agreement has been reached before the commencement of the Constitution,

then the Central Government as well as the Provincial Governments would be perfectly free to create any new obligations upon themselves as between them and the unit or merged State or any other unit that you may conceive of. Therefore, with regard to any transaction that is to take place after the commencement of the Constitution it will be regulated by the agreement which the Provinces will be perfectly free under the Constitution to make, and we need therefore make no provision at all. With regard to the other class of States, as I said, in a case like Mysore it will be independent to make its own arrangement. When that arrangement is made we shall undoubtedly incorporate that in the special part which we propose to enact dealing with the special provisions relating to States in Part III. Therefore, so far as article 270 is concerned, I think there can be no difficulty in regard to it and I think it should be passed as it stands.

**Shri Mahavir Tyagi :** May I know if the agreement mentioned here relates only to financial agreement or does it relate to territorial agreement also ?

**The Honourable Dr. B. R. Ambedkar:** It speaks of assets and liabilities and obligations. If, for instance, a Province has admitted a certain State and has undertaken an obligation to pay the Ruler a certain pension that will be an obligation within the meaning of article 270. The transfer of territory will be governed by other provisions.

**Shri H. V. Kamath :** May I know why the word " rights " mentioned in the marginal sub-head is omitted in the article ?

**The Honourable Dr. B. R. Ambedkar :** The Drafting Committee will look into it.

**Shri B. Das :** With regard to properties possessed by India in foreign countries, specially in the U. K. may I know why those are not included among properties in article 270 ?

**The Honourable Dr. B. R. Ambedkar:** I think that property is subject to partition between India and Pakistan, e.g., the India Office Library, etc., I understand that is being discussed.

**Shri B. Das :** What about the Sterling Balances ?

**The Honourable Dr. B. R. Ambedkar:** My Honourable Friend knows more about it than I do.

*[Article 270, as amended by the only amendment of Dr. Ambedkar, was added to the Constitution.]*

## ARTICLE 271

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That in article 271—

(i) the words ' for the purposes of the Government of that State ' , in the two places where they

occur, be omitted;

(ii) the words ' for the purposes of the Government of India ', in the two places where they occur, be omitted."

**[Amendment was carried. Article 271, as amended was added to the Constitution.]**

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## NEW ARTICLE 271-A

**The Honourable Dr. B. R. Ambedkar :** Sir, I beg to move :

" That the following new article lie added after article 271— (All lands, minerals & other things of value lying within territorial waters vest in the Union.).

271-A. All lands minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of Union' "

This is a very important article. We are going to have integrated into the territory of India several States which are for the time being maritime States and it may be quite possible for such States to raise the issue that anything underlying the ocean within the territorial waters of such States will vest in them. In order to negative any such contention being raised hereafter it is necessary to incorporate this article.

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**Shri H. V. Kamath :** ...Then again, the article says " All lands, minerals and other things of value underlying the ocean within the territorial waters of India ". In Schedule I we have defined the States and the territories of India. But nowhere in this Constitution have we defined what the ' Indian territorial waters ' are. The Constitution is silent on this point.

**Mr. President :** It is a well-understood expression in International Law.

**The Honourable Dr. B. R. Ambedkar :** It is unnecessary to define it separately.

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**Shri H. V. Kamath :** I hope Dr. Ambedkar will clarify the position before the House proceeds to vote on this article.

**Shri A. Thanu Pillai (Travancore States) :** Mr. President, Sir, I hope Dr. Ambedkar will enlighten the House as to the necessity for this provision in the form in which it is worded.

**The Honourable Dr. B. R. Ambedkar :** May I ask what exactly I have to



explain ?

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**Shri M. Ananthasayanam Ayyangar:** I would say " all lands, minerals and other things of value underlying the ocean within the territorial waters and the territorial waters of India shall vest in the Union and be held for the purposes of the Union."

**An Honourable Member :** What about the air ?

**Another Honourable Member :** What about the heavens ?

**The Honourable Dr.B.R.Ambedkar:** Sir.I gave in my speech when I moved the amendment the reasons why we thought such an article was necessary. There seems to be some doubt raised by my Honourable Friend Mr. Pillai that this might also include the right to fisheries. Now I should like to draw his attention to the fact that fisheries are included in List II—entry No. 29.

**Shri A. Thanu Pillai :** My objection related to other matters as well. **The Honourable Dr. B. R. Ambedkar :** I will come to that. I am just dealing with this for the moment. Therefore this entry of fisheries being included expressly in List No. II means that whatever jurisdiction the Central Government would get over the territorial waters would be subject to Entry 29 in List No. II. Therefore, fisheries would continue to be a provincial subject even within the territorial waters of India. That I think must be quite clear to my Honourable Friend, Mr. Pillai, now.

With regard to the first question, the position is this. In the United States, as my Honourable Friend, Shri Alladi Krishnaswami Ayyar said, there has been a question as to whether the territorial waters belong to the United States Government or whether they belong to several States, because you know under the American Constitution, the Central Government gets only such powers as have been expressly given to them. Therefore, in the United States it is a moot question as yet, I think, whether the territorial waters belong to the States or they belong to the Centre. We thought that this is such an important matter that we ought not to leave it either to speculation or to future litigation or to future claims, that we ought right now to settle this question, and therefore this article is introduced. Ordinarily it is always understood that the territorial limits of a State are not confined to the actual physical territory but extend beyond that for three miles in the sea. That is a general proposition which has been accepted by International Law. Now the fear is—I do not want to hide this fact—that if certain maritime States such as, for instance, Cochin, Travancore or Cutch came into the Indian Union, unless there was a specific provision in the Constitution such as the one we are trying to introduce, it would be still open to them to say : " Our accession gives jurisdiction to the Central Government over the physical territory

of the original States; but our territory which includes territorial waters is free from the jurisdiction of the Central Government and we will still continue to exercise our jurisdiction not only on the physical territory, but also on the territorial waters, which according to the International Law and according to our original status before accession belong to us." We therefore want to state expressly in the Constitution that when any maritime States join the Indian Union, the territorial waters of that Maritime State will go to the Central Government. That kind of question shall never be subject to any kind of dispute or adjudication. That is the reason why we want to make this provision in article 271-A.

**Shri M. Ananthasayanam Ayyangar** : What about the ownership of the waters themselves ?

**The Honourable Dr. B. R. Ambedkar** : What do you want to own water for ? You may then want to own the sky above.

**Shri M. Ananthasayanam Ayyangar** : For the manufacture of salt, etc.

**The Honourable Dr. B. R. Ambedkar** : Your laws will prevail over that area. Whatever law you make will have its operation over the area of three miles from the physical territory. That is what is wanted and that you get by this.

**Shri Mahavir Tyagi** : Waters have not been included.

**The Honourable Dr. B. R. Ambedkar** : According to the International Law, the territory of a State not only includes its physical territory, but also three miles beyond. Any law that you make will operate over that area.

**Shri Mahavir Tyagi** : What about the rest of the waters ?

**The Honourable Dr. B. R. Ambedkar** : Anything below the air you get.

**Shri Mahavir Tyagi** : What about waters beyond three miles ?

**Shri M. Ananthasayanam Ayyangar** : May I ask Dr. Ambedkar if he is not aware that water is as much a property as anything else, if not better property and disputes over water have arisen in plenty ? To avoid disputes between a Province and the Union, is it not desirable to include waters also in the property of the Indian Union ?

**Mr. President** : He has answered that; he thinks it is not necessary to say that.

**The Honourable Dr. B. R. Ambedkar** : Anything above the land goes with the land. If there is a tree above the land, the tree goes with the land. Water is above the land and it goes with the land.

**An Honourable Member** : Sir.....

**Mr. President** : I think we have sufficiently discussed and Dr. Ambedkar has replied to the debate. We need have no further discussion. I will put the article to vote.

**Shri K. Hanumanthaiya (Mysore State)** : I want one clarification, Sir. As Dr. Ambedkar says if territorial waters, that is, land three miles beyond the coast-line, belongs to the Union, where is the necessity for this section at all ?

**Mr. President** : That is the question which he has answered.

**Shri K. Hanumanthaiya**: If the interpretation of Dr. Ambedkar holds good.

**Mr. President** : No more discussion about it. Dr. Ambedkar has said what he has to say. Members have to take it.

I shall now put the article to vote.

The question is:

" That the following new article be added, after article 271 :—( All lands, minerals & other things of value lying within territorial Waters vest in the Union.).

271-A. All lands, minerals and other things of All value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union. Waters vest in the Union.

The motion was adopted.

Article 271 -A was added to the Constitution.

## ARTICLE 272

**The Honourable Dr. B. R. Ambedkar** : Sir, I move :

" That in article 272, after the word and figure ' Part I ' in the two places where they occur, the words and figures ' or Part III ' be inserted."

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**Mr. President** : Would you like to speak, Dr. Ambedkar ?

**The Honourable Dr. B. R. Ambedkar** : I think Mr. Munshi has clearly explained and I do not like to add anything to it.

The amendment was adopted.

Article 272, as amended, was added to the Constitution.

## ARTICLE 273

**Mr. President** : We take up 273. Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar** : Sir, I beg to move :

" That in clause (1) of article 273, after the word and figure ' Part I ' the words and figures ' or Part III ' be inserted.

That with reference to amendment No. 201 above, in clause (1) of article 273, after the word ' Governor ' in the two places where it occurs, the words ' or the Ruler ' be inserted.

That with reference to amendment No. 201 above, in clause (2) of article 273, for the word ' the Governor of a state ' the words ' the Governor or the Ruler ' be substituted."

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**The Honourable Dr. B. R. Ambedkar :** Sir, my Honourable Friend Mr. Kamath had something to say about the use of the word " assurances ", and I think his argument was that we were using the word " contracts " in *one* place and " assurances " in another. " Assurance " is a very old word in English conveyancing; it was used and is being used *to* cover all kinds of transfers and therefore the word " assurance " includes the word " contract ". So there is no difficulty if both these words are used because assurance as a transfer of property has the significance of a contract.

**Shri H. V. Kamath :** My difficulty was about the language. The article. starts with " all contracts " and then we have " all such contracts and all assurances of property ", etc.

**The Honourable Dr. B. R. Ambedkar :** If there is any difficulty about the language it will be looked into by the Drafting Committee. I was explaining the technical difference between assurance and contract.

Then Mr. Tyagi asked why a person should be freed of liability if he signs a contract. I think much of the objection raised by Mr- Tyagi would fully disappear if he were made a member of the Cabinet : I should like him to answer the question whether any contract that he has made on behalf of the Government of India should impose a personal liability on him. I am sure he knows the ordinary commercial procedure. A principal appoints an agent to do certain things on his behalf. Unless the agent has acted outside the scope of the authority conferred upon him by the principal, the agent has no personal liability in regard to any contract that he has made for the benefit of the principal. It is the same principle here. My Honourable Friend Mr. Tyagi does not know that there is a well established system in the Government of India whereby it is laid down that it is only a document or letter issued by an (officer of a certain status that binds the Government of India; a document or letter issued by any other officer does not bind the Government of India. We have therefore by rule specifically to say whether it is the Under-Secretary who would have the power to bind the Government of India, or the Joint Secretary or the Additional Secretary or the Secretary alone. Therefore I do not see why the person who is acting merely on behalf of the Government of India as a signing agency should be fastened upon for personal liability, because he is acting on the authority of the Government of India or within the authority of the Government of India. If the Government of India approves of any particular transaction to which the legislature raises any objection as being unnecessary, unprofitable or outside the scope of the legislative authority conferred by Parliament upon the executive Government, it is a matter between the Government and the Parliament. Parliament may either remove the Government or repudiate the contract or do anything it likes. But I do not understand how a personal liability can be fixed upon a man who is merely

appointed as an agent to assure the other party that he is signing in the name of the Government of India. There is no substance in the objection raised by my friend Mr. Tyagi.

**Mr. President :** I will now put the various amendments to vote.

*[All the three amendments by Dr. Ambedkar were accepted. Article 273, as amended, was added to the Constitution.]*

## ARTICLE 274

**Mr. President :** Article 274 is now for discussion.

**The Honourable Dr. B. R. Ambedkar : Sir, I move :**

" That in clause (1) of article 274, for the words ' Government of India ', in the second place where they occur, the words ' Union of India ' be substituted."

Sir, with your permission I will also move my other amendments to this article now.

I move:

" That in sub-clause (a) of clause, (2) of article 274, for the words ' Government of India ' the words ' Union of India ' be substituted."

I move:

" That with reference to amendment No. 2980 of the List of Amendments, in clause (1) of article 274, after the word and figure ' Part I ' the words and figures 'or Part III be inserted."

I move:

" That with reference to amendments Nos. 2980 and 2981 of the List of Amendments, in clause (1) of article 274, for the words ' by the Legislature ' the words ' of. the Legislature ' be substituted."

I move:

" That with reference to amendment No. 204 above, in clause (1) of article 274, after the words ' corresponding Provinces ' the words ' or the corresponding Indian States ' be inserted."

I move:

" That with reference to amendment No. 206 above, in sub-clause (2) of article 274—

(i) after the words ' a province ', the words ' or an Indian State ' be inserted; and

(ii) after the words 'the Province ' the words ' or the Indian State ' be inserted."

**Shri Jaspal Roy Kapoor** (United provinces : General) : I am not moving my amendments Nos. 2981 and 2984. They may well be referred to the Drafting Committee for consideration.

**The Honourable Dr. B. R. Ambedkar :** Sir, perhaps it might be desirable if I read to the House how the article would stand if the various amendments which I have moved were incorporated in the article. The article would read thus :

" The Government of India may sue or be sued in the name of the Union of India, and the Government of a State for the time being specified in Part I or Part III of the First Schedule may sue or be sued in the name of the State and may, subject to any provisions which may be made by Act of Parliament or by the Legislature of such State, enacted by virtue of the powers conferred by this Constitution sue or be sued in relation to their respective spheres in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) if at the date of commencement of this Constitution—

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India—"

that it is the new thing—

" shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the province or the Indian State in those proceedings."

Now this article, as it will be seen, merely prescribes the way in which suits and proceedings shall be stated. This has no other significance at all. The original wording was that it shall be sued in the name of the Government of India. Obviously the Government of India, that is to say, the executive government, is a fleeting body, being there at one time and then disappearing and some other people coming in and taking charge of the executive.

**Shri H. V. Kamath** : The Government is not fleeting; the personnel of the government may be fleeting.

**The Honourable Dr. B. R. Ambedkar** : There is a difference between the Government of India and the Union of India. The Government of India is not a legal entity ; the Union of India is a legal entity, a sovereign body which possesses rights and obligations and therefore it is only right that any suit brought by or against the Central Government should be in the name of the Union or against the Union.

Now, with regard to the term " corresponding States " some difficulty was expressed. It may no doubt be quite difficult to say which State corresponds to the old State. In order to meet this difficulty, provision has been made in article 303 (1) (g), which you will find on page 145 of the Draft Constitution, where it has been provided that a corresponding Province or corresponding State means in cases of doubt such Province or State as may be determined by the President to be the corresponding Province or, as the case may be, the corresponding State for the particular purpose in question. Therefore this difficulty—since the exact equivalent of an old Province or State is difficult to judge as there are bound to be some variations as to territory and so on—can be solved only by giving power to the President to determine which new particular State corresponds to which

particular old State. So that provision has been made.

Sub-clause (2) deals with pending proceedings and all that sub-clause (2) suggests is this : that when any proceedings are pending, where the entities to sue or be sued are different from what we are providing in subclause (1), the Union of India or the corresponding State shall be inserted in the old proceedings, so that the States may be sued in accordance with 274 (1). With regard to the objection taken by my Honourable Friend, Mr. Santhanam that the words " enacted by virtue of powers conferred by this Constitution " as being superfluous, all I can say is I disagree with him and I think these are very necessary.

*[All the amendments of Dr. Ambedkar were accepted and Article 274 was added to the Constitution.]*

### ARTICLE 274-A

**The Honourable Dr. B. R. Ambedkar :** Sir, I would like this article to be held over.

**Mr. President :** Then there is a long amendment, a new part to be added by Mr. Sidhva.

**Shri T. T. Krishnamachari :** May I suggest that the House may take up Part XIII—the election chapter, article 289 and onwards as put in the Order Paper ?

**Shri R. K. Sidhva :** Sir, this new article which I seek to move relates to the delimitation in local areas, urban and rural of the entire territory of India.

**The Honourable Dr. B. R. Ambedkar :** This is to be held over.

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### ARTICLE 289

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**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I move :

" That for article 289. the following article be substituted :—( Superintendence directions & control of elections to be vested in an election commission).

289. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission referred to in this Constitution as the Election Commission) to be

appointed by the President.

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may, from time to time appoint, and when any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the Chairman of the Commission.

(3) Before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President shall also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on it by clause (1) of this article.

(4) The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine :

Provided that the Chief Election Commissioner shall not be removed from office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of the service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment :

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(5) The President or the Governor or Ruler of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article."

**Mr. President :** I have notice of a number of amendments, some in substitution of the articles 289,290 and 291 and some amendments to the amendments which are going to be moved. I think I had better take the amendments which are in the nature of substitution of these articles. Dr. Ambedkar has moved one. There is another amendment in the name of Pandit Thakur Das Bhargava.

**Pandit Hirday Nath Kunzru** (United Provinces : General) : May I ask, Sir, whether Dr. Ambedkar is not going to say anything in support of the proposition that he has moved ? It concerns a very important matter. Is it not desirable that Dr. Ambedkar who has put forward an amendment to article 289 should say something in support of his amendment. I think he would be proceeding on sound lines if he took the trouble of explaining to the House the reasons for asking it to replace the old article 289 by a new article. The matter is of the greatest importance and it is a great pity that Dr. Ambedkar has not considered it worth his while to make a few remarks on this proposition.

**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, I did not make any observation in support of the motion for two reasons. One reason was that if a



debate took place on this article,—it is quite likely that a debate would undoubtedly take place—there would be certain points that will be raised in the debate, which it would be profitable for me to reply to at the close so as to avoid a duplication of any speech on my part. That is one reason.

The second reason was that I thought that everybody must have read my amendment; it is so simple that they must have understood what it meant. Evidently, my Honourable Friend Pandit Kunzru in a hurry has not read my new Draft.

**Pandit Hirday Nath Kunzru :** I have read every line of it; I only want that the Honourable Member should treat the House with some respect.

**The Honourable Dr. B. R. Ambedkar :** The House will remember that in a very early stage in the proceedings of the Constituent Assembly, a Committee was appointed to deal with what are called Fundamental Rights. That Committee made a report that it should be recognised that the independence of the elections and the avoidance of any interference by the executive in the elections to the Legislature should be regarded as a fundamental right and provided for in the chapter dealing with Fundamental Rights. When the matter came up before the House, it was the wish of the House that while there was no objection to regard this matter as of fundamental importance, it should be provided for in some other part of the Constitution and not in the Chapter dealing with Fundamental rights. But the House affirmed without any kind of dissent that in the interests of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day in pursuance of the decision of the House, the Drafting Committee removed this question from the category of Fundamental rights and put it in a separate part containing articles 289,290 and so on. Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive government, there has been no dispute. What article 289 does is to carry out that part of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and the Legislatures of States to a body outside the executive to be called the Election Commission. That is the provision contained in sub-clause (1).

Sub-clause (2) says that there shall be a Chief Election Commissioner and such other Election Commissioners as the President may, from time to time appoint. There were two alternatives before the Drafting Committee, namely, either to have a permanent body consisting of four or five members of the Election Commission who would continue in office throughout without any break, or to permit the President to have an *ad hoc* body appointed at the time when there is an election on the anvil. The Committee, has steered a middle course. What the

drafting committee proposes by sub-clause (2) is to have permanently in office one man called the Chief Election Commissioner so that the skeleton machinery would always be available. Elections no doubt will generally take place at the end of five years; but there is this question namely that a bye-election may take place at any time. The Assembly may be dissolved before its period of five years has expired. Consequently, the electoral rolls will have to be kept up to date all the time so that the new election may take place without any difficulty. It was therefore felt that having regard to these exigencies, it would be sufficient if there was permanently in session one officer to be called the Chief Election Commissioner, while when the elections are coming up, the President may further add to the machinery by appointing other members to the Election Commission.

Now, Sir, the original proposal under article 289 was that there should be one Commission to deal with the elections to the Central Legislature, both the Upper and the Lower House, and that there should be a separate Election Commission for each province and each State, to be appointed by the Governor or the Ruler of the State. Comparing that with the present article 289, there is undoubtedly, a radical change. This article proposes to centralise the election machinery in the hands of a single Commission to be assisted by regional Commissioners, not working under the provincial Government, but working under the superintendence and control of the Central Election Commission. As I said, this is undoubtedly a radical change. But, this change has become necessary because today we find that in some of the provinces of India, the population is a mixture. There are what may be called original inhabitants, so to say, the native people of a particular province. Along with them there are other people residing there, who are either racially, linguistically or culturally different from the dominant people who are the occupants of that particular Province. It has been brought to the notice both of the Drafting Committee as well as of the central Government that in these provinces the executive Government is instructing or managing things in such a manner that those people who do not belong to them either racially, culturally or linguistically, are being excluded from being brought on the electoral rolls. The House will realise that franchise is a most fundamental thing in a democracy. No person who is entitled to be brought into the electoral rolls on the grounds which we have already mentioned in our Constitution, namely, an adult of 21 years of age, should be excluded merely as a result of the prejudice of a local Government, or the whim of an officer. That would cut at the very root of democratic Government. In order, therefore, to prevent injustice being done by provincial Governments to people other than those who belong to the province racially, linguistically and culturally, it is felt desirable to depart from the original proposal of having a separate Election Commission for each province under the guidance of the Governor and the local Government. Therefore, this new change

has been brought about, namely, that the whole of the election machinery should be in the hands of a central Election Commission which alone would be entitled to issue directives to returning officers, polling officers and others engaged in the preparation and revision of electoral rolls so that no injustice may be done to any citizen in India, who under this Constitution is entitled to be brought on the electoral rolls. That alone is, if I may say so, a radical and fundamental departure from the existing provisions of the Draft Constitution.

So far as clause (4) is concerned, we have left the matter to the President to determine the conditions of service and the tenure of office of the members of the Election Commission, subject to one or two conditions, that the Chief Election Commissioner shall not be liable to be removed except in the same manner as a Judge of the Supreme Court, If the object of this House is that all matters relating to elections should be outside the control of the Executive Government of the day, it is absolutely necessary that the new machinery which we are setting up, namely, the Election Commission should be irremovable by the executive by a *mere fiat*. We have therefore given the Chief Election Commissioner the same status so far as removability is concerned as we have given to the Judges of the Supreme Court. We, of course, do not propose to give the same status to the Other members of the Commission. We have left the matter to the President as to the circumstances under which he would deem fit to remove any other member of the Election commission, subject to one condition that the Chief Election Commissioner must recommend that the removal is just and proper.

Then the question was whether the Electoral Commission should have authority to have an independent staff of its own to carry on the work which has been entrusted to it. it was felt that to allow the Election Commission to have an independent machinery to carry on all the work of the preparation of the electoral roll, the revision of the roll, the conduct of the elections and so on would be really duplicating the machinery and creating unnecessary administrative expense which could be easily avoided for the simple reason, as I have stated, that the work of the Electoral Commission may be at times heavy and at other times it may have no work. Therefore we have provided in clause (5) that it should be open for the Commission to borrow from the provincial Governments such clerical and ministerial agency as may be necessary for the purposes of carrying out the functions with which the Commission has been entrusted. When the work is over, that ministerial staff will return to the provincial Government. During the time that it is working under the Electoral Commission, no doubt administratively, it would be responsible to the Commission and not to the Executive Government. These are the provisions of this article and I hope the House will now realise what it means and in what respects it constitutes a departure from the original articles of the draft Constitution.

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**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Mr. President, Sir, this amendment of mine has been subjected to criticism from various points of view. But in my reply I do not propose to spread myself over all the points that have been raised in the course of the debate. I propose to confine myself to the points raised by my Friend Professor Shibban Lal Saksena and emphasized by my Friend Pandit Hirday Nath Kunzru. According to the amendment moved by my Friend Professor Saksena, there are really two points which require our consideration. The one point is with regard to the appointment of the Commissioner to this Election Commission and the second relates to the removal of the Election Commissioner. So far as the question of removal is concerned, I personally do not think that any change is necessary in the amendment which I have proposed, as the House will see that so far as the removal of the members of the Election Commission is concerned the Chief Commissioner is placed on the same footing as the Judges of the Supreme Court. And I do not know that there exists any measure of greater security in any other Constitution which is better than the one we have provided for in the proviso to clause (4).

With regard to the other Commissioners the provision is that, while the power is left with the President to remove them, that power is subjected to a very important limitation, *viz.*, that in the matter of removal of the other Commissioners, the President can only act on the recommendation of the Chief Election Commissioner. My contention therefore is, so far as the question of removal is concerned, the provisions which are incorporated in my amendment are adequate and nothing more is necessary for that purpose.

Now with regard to the question of appointment I must confess that there is a great deal of force in what my friend Professor Saksena said that there is no use making the tenure of the Election Commissioner a fixed and secure tenure if there is no provision in the Constitution to prevent either a fool or a knave or a person who is likely to be under the thumb of the Executive. My provision—1 must admit—does not contain anything to provide against nomination of an unfit person to the post of the Chief Election Commissioner or the other Election Commissioners. I do want to confess that this is a very important question and it has given me a great deal of headache and I have no doubt about it that it is going to give this House a great deal of headache. In the U.S.A. they have solved this question by the provision contained in article 2 Section (2) of their Constitution whereby certain appointments which are specified in Section (2) of article 2 cannot be made by the President without the concurrence of the Senate; so that so far as the power of appointment is concerned, although it is vested in the President it is subject to a check by the Senate so that the Senate may, at the

time when any particular name is proposed, make enquiries and satisfy itself that the person proposed is a proper person. But it must also be realised that that is a very dilatory process, a very difficult process. Parliament may not be meeting at the time when the appointment is made and the appointment must be made at once without waiting. Secondly, the American practice is likely and in fact does introduce political considerations in the making of appointments. Consequently, while I think that the provisions contained in the American Constitution is a very salutary check upon the extravagance of the President in making his appointments, it is likely to create administrative difficulties and I am therefore hesitating whether I should at a later stage recommend the adoption of the American provisions in our Constitution. The Drafting Committee had paid considerable attention to this question because as I said it is going to be one of our greatest headaches and as a *via media* it was thought that if this Assembly would give or enact what is called an Instrument of Instructions to the President and provide therein some machinery which it would be obligatory on the President to consult before making any appointment, I think the difficulties which are felt as resulting from the American Constitution may be obviated and the advantage which is contained therein may be secured. At this stage it is impossible for me to see or anticipate what attitude this House will take when the particular draft Instructions come before the House. If the House rejects the proposal of the Drafting Committee that there should be an Instrument of Instructions to the President which might include, among other things, a provision with regard to the making of appointments, this problem would then be solved by that method. But, as I said, it is quite difficult for me to anticipate what may happen. Therefore in order to meet the criticism of my Honourable Friend Prof. Saksena, supported by the criticism of my Honourable Friend Pandit Kunzru, I am prepared to make certain amendments in amendment No. 99. I am sorry I did not have time to circulate these amendments, but when I read them the House will know what I am proposing.

My first amendment is :

" That the words ' to be appointed by the President ' at the end of clause (1) be deleted."

" In clause (2) in line 4, for the word ' appoint ' substitute the word ' fix ' after which insert the following :—

"The appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President."

" The rest of the clause from the words ' when any other Election Commissioner is so appointed ' etc., should be numbered clause (2a).

**Shri M. Ananthasayanam Ayyangar** (Madras : General) : Sir, on a point of order, new matter is being introduced which ought not to be allowed at this stage.

Otherwise there will have to be another debate.

**The Honourable Dr. B. R. Ambedkar** : I hope the Chair will allow other members to offer their views.

**Mr. President**: In that case I think the best course would be to postpone consideration of this article.

**The Honourable Dr. B. R. Ambedkar** : These amendments are quite inoffensive; they merely say that anything done should be subject to laws made by Parliament.

**Shri T. T. Krishnamachari** (Madras : General) : I suggest that these amendments may be cyclostyled and circulated, and they may be taken up later on.

**The Honourable Shri K. Santhanam** (Madras : General) : I suggest that these may be considered by the Drafting Committee. Even if they are merely technical we must have an opportunity of considering them.

**The Honourable Dr. B. R. Ambedkar** : These amendments have been brought after consultation with the Drafting Committee.

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**Mr. President** : Let the amendments be moved.

**The Honourable Dr. B. R. Ambedkar** : My next amendment is :

"That in the beginning of clause (4) the following words should be inserted :—

' subject to the provisions of any law made in this behalf by Parliament '."

**The Honourable Shri K. Santhanam** : Sir, this is a material amendment because the President's discretion may be fettered by parliamentary law.

**Mr. President** : I do not think any further discussion is necessary; let these be moved.

**The Honourable Dr. B. R. Ambedkar**: You cannot deal with a Constitution on technical points. Too many technicalities will destroy constitution-making.

**Shri H. V. Kamath** : Sir, you ruled some days ago that substantial amendments would be postponed.

**Mr. President** : If these are considered to be substantial amendments they will be held over. As there seems to be a large body of opinion in the House in favour of postponement, the discussion will be held over.

#### NEW ARTICLE 289-A

**The Honourable Dr. B. R. Ambedkar** : Sir, I move :

"That with reference to amendment No. 110 of List I (Fifth Week), for the proposed new article 289-A, the following article be substituted :—

( No person to be ineligible for inclusion in, or to claim to be excluded from the electoral roll on grounds of religion, race, caste or sex ).

289-A. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in, or claim to be excluded from, any such roll on grounds only of religion, race, caste, sex or any of them."

Sir, the object of this is merely to give effect to the decision of the House that there shall hereafter be no separate electorates at all. As a matter of fact this clause is unnecessary because by later amendments we shall be deleting the provisions contained in the Draft Constitution which make provision for representations of Muslims, Sikhs, Angle-Indians and so on. Consequently this is unnecessary. But it is the feeling that since we have taken a very important decision which practically nullifies the past it is better that the Constitution should in express terms State and that is the reason why I have brought forward this amendment.

**Mr. President** : Do I take it that only for the purpose of discussion you have brought it up and that you do not want it to be passed ?

**The Honourable Dr. B. R. Ambedkar** : No, Sir, not like that. I have moved the amendment. I was only giving the reasons why I have brought it up.

I shall move the other amendment also for inserting new article 289-B, I move:

" That for amendment No. 3087 of the List of Amendments, the following be substituted:—

" That after article 289-A, the following new article be inserted :—( Elections to the House of the people & to the Legislative Assemblies of States to be on the basis of adult suffrage).

289-B. The elections to the House of the People and to the Legislative assembly of every State shall be on the basis of adult suffrage, that is to say, every citizen, who is not less than twenty-one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election."

**[Amendment was adopted. Article 289-B was added to the Constitution.]**

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## ARTICLE 290

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That for article 290, the following article be substituted :—( Power of Parliament to make provisions with respect to elections to Legislatures).

290. Subject to the provisions of this Constitution, Parliament may from time to time by make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including matters necessary for securing the due constitution of such House or Houses and the delimitation of constituencies."

Sir, with your permission I would also like to move the other amendment which amends this. I move :

" That with reference to amendment No. 123 of List I (Fifth Week) in the new article 290, after the word ' including ' the words ' the preparation of electoral rolls and all other ' be inserted."

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**Mr. President :** I find that there is notice of an amendment by Prof. Shibban Lal Saksena to article 290. He was not here at the time the amendments were moved. Anyhow it is not an amendment of substantial character.

If Dr. Ambedkar does not want to say anything in reply I shall put the amendment to vote.

**The Honourable Dr. B. R. Ambedkar :** I have nothing to say, Sir.

*[Above mentioned amendments of Dr. Ambedkar were adopted. Article 290, as amended was added to the Constitution.]*

## ARTICLE 291

**The Honourable Dr. B.R.Ambedkar:** I move:

" That for article 291, the following article be substituted :—( Power of Legislature of a State to make provisions with respect to election to such Legislature).

291. Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provisions with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including matters necessary for securing



the due Constitution of such House or Houses."

Sir, with your permission I move also amendment No. 211 of List VI Fifth week.

The amendment runs thus :

" That with reference to amendment No. 128 of List I (Fifth Week) in the new article 291., after the word ' including ' the words ' the preparation of electoral rolls and all other ' be inserted."

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**The Honourable Dr. B. R. Ambedkar** : I think Mr. Kamath has not properly read or has not properly understood the two articles 290 and 291. While 290 gives power to Parliament, 291 says that if there is any matter which is not provided for by Parliament, then it shall be open to the State Legislature to provide for it. This is a sort of residue which Parliament may leave to the State Legislature. This is a residuary article. Beyond that, there is nothing.

**Shri A. Thanu Pillai** (Travancore State) : When steps have to be taken according to the time schedule, is the local Legislature to wait and see what the Central Parliament does ?

**The Honourable Dr. B. R. Ambedkar** : Primarily it shall be the duty of the Parliament to make provision under 290. The obligation is squarely placed upon Parliament. It shall be the duty and the obligation of the Parliament to make provision by law for matters that are included in 290, In making provisions for matters which are specified in 290, if any matter has not been specifically and expressly provided for by Parliament, then 291 says that the State Legislature shall not be excluded from making any provision which Parliament has failed to make with regard to any matter included in 290.

**Shri A. Thannu Pillai** : May I know from Dr. Ambedkar whether it would not be better for either the central legislature or the Local Legislature to be charged with full responsibility in this matter so that elections may go on according to the time schedule ?

**The Honourable Dr. B. R. Ambedkar** : I do not agree. There are matters which are essential and which Parliament might think should be provided for by itself. There are other matters which Parliament may think are of such local character and liable to variations from province to province that it would be better for Parliament to leave them to the Local Legislature. That is the reason for the distinction between 290 and 291.

*[Amendments of Dr. Ambedkar were adopted. Article 291 as amended was added to the Constitution.]*

## ARTICLE 291—A

**The Honourable Dr. B. R. Ambedkar** : Sir, I move :

" That after article 291, the following new article be inserted :—

Bar to jurisdiction of courts in electoral matters.( Bar to jurisdiction of courts in electoral matters).

291-A. Notwithstanding anything contained in this Constitution—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 290 or article 291 of this Constitution shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature;

(c) provision may be made by or under any law made by the appropriate Legislature for the finality of proceedings relating to or in connection with any such election at any stage of such election."

Sir, I also move :

" That with reference to amendment No. 132 of List I (Fifth Week) in the new article 291-A, clause (c) be omitted."

***[Article 291-A, as amended by Dr. Ambedkar's amendment was added to the Constitution.]***

## **ARTICLE 297**

**Shri H. V. Kamath** : Mr. President, Sir, I move :

"That in clause (2) of article 297, for the words ' if such members are found qualified for appointment on merit as compared with the members of other communities ', the words ' provided that such appointment is made on ground only of merit as compared with the members of other communities ' be substituted."

I think, Sir, that this is an amendment more or less of a drafting nature and I leave it to the cumulative wisdom of the Drafting Committee to consider it at the appropriate stage.

**The Honourable Dr. B. R. Ambedkar** : I do not see that it is of a drafting nature. However we shall consider it later on.

***[Article 297 was added to the Constitution.]***

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## **ARTICLE 300**

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That with reference to amendment No. 3186 of the List of Amendments clause (1) of article 300 after the word and figure ' Part I ' the words and figure ' Part III ' be inserted."

**Mr. President :** Dr. Ambedkar, do you wish to say anything '!

**The Honourable Dr. B. R. Ambedkar :** No. Sir.

*[Dr. Ambedkar's above amendment was adopted. Article 300, as amended, was added to the Constitution.]*

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### ARTICLE 301

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**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That in clause (3) of article 301 for the word ' Parliament ' the words ' each House of Parliament ' be substituted."

*[Article 301, as amended by Dr. Ambedkar's amendment was added to the Constitution.]*

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**Mr. President :** You are again assuming that it will be a session of the House.

**Shri Jaspat Roy Kapoor :** My submission were based on that assumption surely, but I do not know if there can be any other assumption. We find everywhere that members shall be electing the President, Vice-President and members of the Council of States as members of the legislature and in no other capacity. For instance, we find in article 55 that the Vice-President will be elected by members of both Houses of Parliament in a meeting.

**The Honourable Dr. B. R. Ambedkar :** *The wording is " at a joint meeting " and not " sitting ".*

**Shri Jaspat Roy Kapoor :** It will be all right if that point is authoritatively stated on the Floor of the House so as to avoid the possibility of this article being interpreted differently....

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### ARTICLE 289

**Mr. President :** I will first put the amendment which Dr. Ambedkar has moved last.

The question is:

" That in amendment No. 99 of List I in the proposed article 289—

(i) ill clause (1) the words ' to be appointed by the President ' occurring at the end be deleted.

(ii) for clause (2), the following clauses be substituted :—

'(2) The election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any. as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President.'

'(2a) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Commission.'

(iii) in clause (4), before the words " The conditions of service ' the words ' subject to the provisions of any law made by Parliament ' be inserted."

The amendment was adopted.

***[Six amendments by other members were negatived.]***

***[Article 289, as amended was added to the Constitution.]***

***[The Assembly was adjourned until a date in July 1949 to be fixed by the President.]***

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